THE REPUBLIC OF UGANDA

PROCEEDINGS

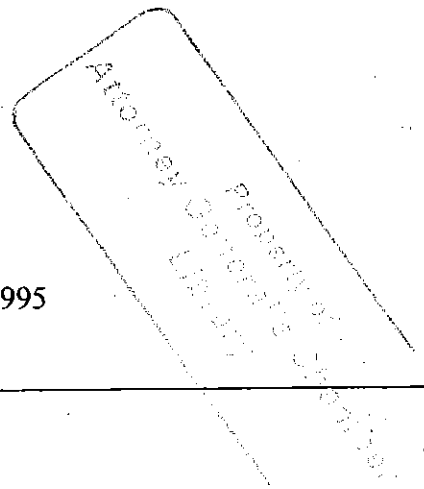
OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

MONDAY, 3RD APRIL 1995



MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3755]

Price Shs. 3,150

Monday, 3rd April, 1995

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

NATIONAL ANTHEM

PRAYERS

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

(The Assembly was called to order)

THE DEPUTY CHAIRMAN: Hon. Delegates, last Friday we were discussing the Motion moved by Hon. Kasajja, Karusoke and Kanyeihamba and on that Motion we had cleared No.1, deleted it. No.2 we had passed it. No.3, the problem was whether we take 30 years or 25.

CONSIDERATION STAGE OF THE DRAFT CONSTITUTION OF THE REPUBLIC OF UGANDA

CHAPTER 13 - LOCAL GOVERNMENT

ARTICLE 208 - CHAIRMAN OF THE DISTRICT COUNCIL

MR. SSEKITOLEKO SEBASTIANE (Bugangaizi County): Thank you, Mr. Chairman. When we adjourned I was on the Floor. Madam Chairman, it is very important that we consider the age of 25 for the Chairmanship of the district. As I said earlier, most of our young men these days leave the University at the age of 21 or 22. So, three years is just enough for them to gain experience in our society. But even then, the world all over even our own society, there are so many people and many among us who have attained possible responsibility at the age of 25 even less. I know well, Madam, that even our current Minister for Local Government became a Mayor at much lesser age of 25. So, I do not see why we do not consider the age of 25 as a normal age for a person to become a Chairman of the district. Madam Chairman, I beg to support.

LT. COL. SSERWANGA LWANGA (NRA Delegate): Madam Chairperson, I wanted to move an Amendment to his to say that the Chairman of the District Council shall have the same qualification as Members of Parliament.

THE DEPUTY CHAIRMAN: That is where we started and it was rejected. The argument was that this is an executive job not one where one can gather momentum from colleagues. One has to stand it alone.

LT. COL. SSERWANGA LWANGA: Madam Chairperson, if that was rejected, I have nothing but to oppose the Motion on the Floor. We throw it out. It is not necessary to specify the qualifications of the Chairman. The issue of education and the issue of age should be left to the electorate. Because if we start limiting we are going even to miss very prominent people. I will take you to the districts. Most of these leaders of the districts are J.1, J.2, J.3. They are not O'Level people and if we are going to limit ourselves to O'Level and 21 years, we are going to get misled. A District Chairman is going to face a general election. Therefore, let the population judge. If he is young, they will not vote him. So, Madam Chairperson, I oppose the Motion. Thank you.

MR. BASALIZA HENRY (Fort Portal Municipality): Madam Chairman, I would like to inform Hon. Sserwanga Lwanga that it is not a question of being prominent in the district. There are so many people who are prominent. But it is a question of the work which is going to be performed by the Chairman of the R.C.5. Madam Chairperson, we have already stated that this Chairman is going to deal with the Members of Parliament, thus, they should have A'Level or its equivalent. Further more, this man or woman will be negotiating loans. He will be taking precedence over everything in the district when it comes to officiating on important occasions. So, Madam Chairman, I think it is imperative that we fix the qualifications of an R.C.5 Chairman which we have already stated with other Members. Almost all of us approved that we should have O'Level or Certificate or equivalent. Thank you very much, Madam Chairperson.

MR. OKALEBO EPHRAHIM (Bukedea County): Madam Chairman, in the first place I begin by wondering as to why we have a National Bureau of Standards in Uganda. If we have it and hold it in esteem as a body as to decide on standards, not a matter of leaving it to the consumer and open market to decide on standards. Then there is even need for us to standardise the age of the Chairman of the District Council. Why are we worried of

setting standards? How do other people judge us? I think they would be guided by seeing the kind of person who is in the leadership in the district. So, for sure reducing the age of a Chairman of the District will not look very good with us because this is not a simple post compared to even a Member of Parliament. I am told there are people in Parliament who have not said anything for the whole year. But the Chairman of the District Council cannot afford to keep quiet until the term office. This is a very responsible man dealing with all categories of people in the district. Even if you have the highest man in the country visiting the district, he is the host.And the host should be capable of handling different classes of people. He should not be a shy man, he should not be a very young man that people would look at as a boy. Look at him as a person of maturity both body and mind. So, the age stipulated in the Report is the right age according to me Madam Chairman. Thank you.

MR. ELYAU MIKE (Kalaki County): Madam Chairman, a Council is a local Council. There are some local issues which small boys cannot handle at times. If we are serious about the District Council, he is not going to handle the ability to do arithmetic. There are issues which are very bitter that need somebody with at least some experience. I agree with that.

MR. MULENGA JOSEPH (Democratic Party): Madam Chairman, I would like to add my voice to those who say we should have age qualification for the Chairman of a district particularly in my opinion in view of the responsibility. I think the Chairman of the district should be someone who is settled not straight from school still making efforts to make a home and things like that. I am reminded of what the President said recently, referring to the prayer. This young man of 25 or 18 coming from school wanting to look like a leader of the district, he can be elected, and may be intelligent and all that. But the temptation will be too much for him to pull his status up. Therefore, let us limit our search of the Chairman to people who have settled. I would in fact have preferred the age of 35 like the President. Madam Chairman I support the idea of putting a limit of age. Thank you.

THE DEPUTY CHAIRMAN: I now put the question that instead of 30 we have 25 years.

(Question put and negatived)

THE DEPUTY CHAIRMAN: I now put the question that 208 do stand part of this Constitution.

(Question put and agreed to)

MR. KATENTA APUULI (Conservative Party): Madam Chairman, the Committee recommends that Clause 1 of Article 209 be amended to read: *"Each district shall have a Speaker elected by the District Council from among its Members, but a person shall be taken to have been elected if the votes cast in his or her favour are more than 50 per cent of all the Members of the District Council."* Madam Chairman, I beg to move.

THE DEPUTY CHAIRMAN: I now put the question as quoted above.

(Question put and agreed to)

MR. KATENTA APUULI: Madam Chairman, because we have changed the mode of election of the Chairman, therefore, we recommend that Clause 2 be deleted.

THE DEPUTY CHAIRMAN: I now put the question as above.

(Question put and agreed to)

Clause 3.

MR. KATENTA APUULI: The Committee recommends that Clause 3 be slightly amended to read: *"The Speaker of the Council shall in relation to the Council perform the same functions as the Speaker of Parliament."* Madam Chairman, I beg to move.

THE CHAIRPERSON: I now put the question as read above.

(Question put and agreed to)

Clause 4.

MR. KATENTA APUULI: The Committee recommends that a new Clause 4 be introduced in the Constitution to read: *"If the district Chairman dies, resigns or he is removed from office, the Speaker shall assume the office of the Chairman until the election of the new District Chairman except that the elections shall be held within six months."* Madam Chairman, I beg to move.

MR. AGGREY AWORI (Samia Bugwe North): Madam Chairman, I am seeking clarification from the Hon. Chairman of the Committee for the matter of the Vice Chairman. Do I assume that the Speaker of the Council takes precedence over the Vice Chairman.

MR. KATENTA APUULI: Madam Chairman, the Deputy Vice Chairman deputises for the Chairman when he is absent. However, where it is a matter of succession, the Vice Chairman does not automatically succeed the Chairman. The Vice Chairman only deputises. In the matter of succession the Speaker succeeds until a new Chairman is elected. That is the way the Committee looked at it and thought that was the better way to do things.

MR. AGGREY AWORI: Madam Chairman, in that case I would say that we should re-organise the sequence of these Articles here. We are going to have another person, the Vice Chairman,then we are talking about the third person called the Speaker. I think let us clear the Office of the Chairman which also covers the office of the Vice Chairman before we get onto the third position of the Speaker of the Council. In the absence of the Chairman, automatically the Vice Chairman shall assume his functions. So, in that case let us define and put that position clear in the Constitution before we get to the position of the Speaker.The sequence here, I am begging the Committee,should be revised.

MR. CHEBET MAIKUT (Kween County): I am seeking clarification from the Chairman of the Committee 4 as to where it is provided for the post of Vice Chairman for the district. Is it by implication? Thank you.

MR. KASOLE BWERERE (Buwekula County): Madam Chairman, before I decide whether to support or not, I would like to be clarified by the Chairman of Select Committee 4. The method used to appoint or elect the Vice Chairman.

THE DEPUTY CHAIRMAN: Hon. Kasole if you had read your Report correctly, Page 14 - 208 (b), I think that is taken care of.

MR. KATENTA APUULI: Madam Chairman, Hon. Chebet Maikut questioned the issue of succession. Why did we choose Speaker to succeed where the Chairman is no longer going to be available. The issue is really in the mode of the appointment of these people. In the mode of appointing the Speaker, the Speaker is elected by the entire Council. Whereas the Vice Chairman, is Vice Chairman only by virtue of his being a Member of the Executive which Executive is appointed by the Chair with the approval of the Council. Therefore, in terms of status, the Speaker is a higher status than the Member of the Executive. We provided a Member of a Deputy because we did not want the Speaker to be the Deputy Speaker.

Then that would be get in the way of separation of powers. We have not even provided for the Vice Chairman as an officer as such. You become Vice Chairman because you are already a member of the Executive. That is your substantive work. But from among the secretaries, now and again, the Chairman can appoint who deputises for him when the Chairman is not in Fort Portal and visiting Kampala or Jinja. The purpose of this was to reduce the cost. The cost of maintaining the Local Government is higher. We thought that a deputy Vice Chairman should not be an independent office. You should hold that office by virtue of your being a member of the Executive and you get extra remuneration for that.

MR. KASAJJA PATRICK (Bulamogi County: Madam Chairperson, I would like to get clarification from the Chairman of the Committee and I wish to take him back Page 15 where we have already passed this Article 207 which deals with the functions of the Chairman. The first function (a) states that the Chairman shall preside at meetings of the Executive Committee of the district. Now the unknown factor here is how this Executive Committee is to be elected from the Council. I wish therefore, to get a clarification from the Chairman as to whether these Members of the Executive Committee are appointed by the Chairman. If they are appointed by the Chairman, then I think the Chairman's contribution could be right. But if they are to be elected as the practice has been by the Council, then it is misnomer to have the Speaker presiding over a meeting in the absence of the Chairman. So, I would like him to tell me whether it is implied that the Chairman will pick these Members of the Executive on his own.

MR. MULENGA: Madam Chairman, I would also like an explanation following what the Chairman of the Committee 4 has said that the Vice

Chairman is not a substantive post yet we have said the Vice Chairman shall be appointed by the Chairman with approval of Council. I would have thought that is a substantive appointment. It is not appointing only when he is travelling to say so and so shall be vice chairman for purposes of deputising. I also would like the Chairman to look back to what we have done in respect of the national Government. The President will have a Vice President whom he appoints with approval of Parliament. It looks similar to me what is being proposed for the district is similar to what we have passed for the national Government. Therefore, it would be logical to follow what we have done. It would be more consistent to follow what we have done for the national Government.We say if the Chairman of the District dies, resigns or whatever, ceases to be Chairman,the Vice should be. The same way we have done for the Vice President. Only when the two of them are away, should we have the Speaker step in. Is there any rational ground why we should change the pattern when it comes to the district, even the district will also respect this principle of division of separation of powers. Thank you, Madam Chairman.

MR. KATENTA APUULI: Madam Chairperson, let me start with Hon. Kasajja. IfHon. Kasajja could look at Clause 2 (b). We are talking about an executive committee which shall consist of (b), such number of secretaries as the Council may decide being persons nominated by the Chairman from among Members of the Council and approved by the majority of all the Members with Council. So, in terms of modality of appointment a secretary becomes a secretary because he is nominated by the Chair.

Now, with regard to Hon. Mulenga's question, Clause 4 provides that there shall be a Vice Chairman of the Executive Committee who shall be a person nominated by the district chairman from among the secretaries and approved by the majority of all the Members of the Council. So, the Chairman, appoints the secretaries and gets the approval of the Council itself. The purpose for trying to make the Vice Chairman, not a substantive job, that is target to some other job where you are a secretary of Finance or secretary for mobilisation or a secretary for women was for the purpose of saving money. Because we have already created the office of Speaker. Now, if you add Speaker to the Chairman to all these secretaries, you find that some of the districts may not be able to afford the bill of paying all these people. That is why we decided that to take the office of the Deputy nearer to deputise because the Chairman goes to Rukungiri from Bundibugyo. That is really not enough for the Speaker to take over. We feel that the Speaker should only take over in very serious matters. However if the Plenary feels that at all times, let the Vice Chair be person to succeed I would plead with my Committee that there is nothing fundamental about that principle. We can accept it. However, we thought that deputising is a simple matter and succession is a much more serious matter. Therefore, it should be addressed separately. But if you want to follow the same format as we have set for the nation, I do not think that the Committee would have difficulties with that. It is really up to the decision of this Plenary.

MR. ABALIWANO ALBERT (Bugabula South): Madam Chairman, I will beg the indulgence of my Chairman of Committee 4 that it is normally a practice that the post of the Speaker generally in every Parliament and every Council is a very high office. A Speaker is expected to be a very independent person. A person who has excelled in his political career and a person whose ambition is no longer to become a Chairman but rather to continue as a Speaker so that he is fair in every way. In a normal Parliament, he would normally have two Parties, three Parties and what have you. This person holding that post must have the confidence of everybody in the House. To such an extent that as a Speaker he would not take necessarily sides because he belongs to a certain party or not. In this instance therefore, a Speaker is an automatic person to take over because if what he is doing is to be in a position to hold the Council together until such time when a new election takes place for the Chairman. That Vice Chairman we are talking about would be an interested party to become a Chairman. Therefore, he cannot deputise. He cannot continue being a Chairman at the same time campaigning to become Chairman. So, you need a Speaker to be in the Council to hold office until such time when elections are over and the new Chairman is elected. I think that is the rational behind all this business of saying, the Speaker in this instance should hold fort until such time when an election is held and a new Chairman is appointed or elected. Thank you, Madam Chairperson.

MR. PAUL ETIANG (Tororo County): Madam Chairman, I think on the basis of representation given by the Chairman right now supplemented by Hon. Abaliwano, I tend to go along with the argument given by Hon. Mulenga. As it is here, the office of Vice Chairman certainly sounds substantive. If the fears that Hon. Abaliwano has just given had reasons behind these proposals, then the presentation should be that the Chairman as and when necessary shall nominate secretaries to deputise for him. That will make it very, very clear that the office of Vice Chairman is not substantive. Because where it is actually substantive as it is now, is along the same lines as that for the presidency to reserve for the Chief Executive. I would like perhaps to suggest and the Chairman appears to have gone along with that until Hon. Abaliwano said that perhaps the Committee could have a look at it. Either they specifically reward it to provide for the Chairman to nominate an acting Chairman or a Vice Chairman as and when necessary. Or if they go along these lines they should go along the proposals that have been made by the Hon. Mulenga. Thank you.

MRS. KALEMA RHODA (Kiboga County East): Thank you, Madam Chairman. I am also not very happy about the new role of the Speaker to take care of the Council when the Chairman dies. Clause 4 where it reads that if a District Chairman dies, resigns or he is removed from office, the Speaker shall assume the office of Chairman until the election of the new District Chairman, except that the election shall be held within six months. Madam Chairman, the Chairman has got set functions as seen on Page 15, Clause 3 of Article 207. The clarification I would like to get from the Chairman of the Committee is which of all these four functions: *"(a) preside at meetings of the Executive Committee of the district. (b) oversee the general administration of the district. (c) coordinate the activities of the urban councils and councils of the Local Administrative units in the district. (d) to coordinate and monitor the Government functions as between the district and the Central Government."* It seems to me that roles of the Chairman and his functions are many. If we let the Speaker assume his office for a minimum of six months, how many of his functions are we expecting the Speaker to handle during that period? As Hon. Abaliwano said, I think the role of a Speaker since we have also said, the Committee has recommended in Clause 3 of 209, that the Speaker of the Council shall in relation to the Council, perform the same functions as the Speaker of Parliament. I would like to be clarified if the Committee feels the Speaker as we see him in the Council can really play that role effectively rather than the Vice Chairman. Thank you.

MR. BAGEYA PATRICK (Kigulu County North): Madam Chairman, it is only common sense that we are electing a Vice Chairman of the District and his duties -*(interjection)*

THE DEPUTY CHAIRMAN: Hon. Bageya, can you withdraw that word 'common sense' please.

MR. BAGEYA: I have withdrawn with apologies. Madam Chairman, here we are having two scenarios. If we say that when the Chairman dies, the Speaker will take over. We are yet numbered with another job of appointing a Speaker because he cannot play two roles of a Speaker and at the same time a Chairman.

Secondly, the purpose of having a Vice Chairman, is purely to undertake the duties of a Chairman in his absence and if he dies automatically he should be in a position to take over as Chairman until further arrangements are made. If we say that the Speaker will be the Chairman, it means the Vice Chairman will be the Vice to the Speaker and therefore, we need to appoint the Speaker as if it is the Speaker who has died. So, I think for consistence I implore my Colleagues that we let the Vice Chairman take over if the Chairman dies. I beg to move.

MR. AGGREY AWORI: Madam Chairman, I would like to move an amendment to become 4: *"(a) Each district shall have a Vice Chairman, elected by the District Council from among its Members."*

THE DEPUTY CHAIRMAN: Which means if we introduce that (a), that means we shall delete 210 (4) and (5)?

MR. AGGREY AWORI: Correct! That is what I am seeking. Essentially, Madam Chairperson, the import of my Amendment is to make sure that the Vice Chairman is the person to deputise for the Chairman in his or her absence. Not as it is, the Speaker per say. Secondly, to make the position of Vice Chairman substantive rather than adhoc.

THE DEPUTY CHAIRMAN: Is it seconded?

MR. MULENGA: Madam Chairperson. We are understood as to be dealing with Clause 4 of Article 209, and that is about who takes over when Chairman dies, resigns and so forth. It seems out of procedure to be talking or moving an Amendment to a later Article which we have not reached. Article 210 is ahead. We are dealing with Article 209. Madam Chairperson, may I move an Amendment to Clause 4 to substitute Vice Chairman for Speaker. So that the Clause reads: *"If the District Chairman dies, resigns or is removed from office, the Vice Chairman shall assume the office of Chairman until the election of the new district Chairman."*

DR. BYARUHANGA FABIUS (Kitagwenda County): Madam Chairperson, Article 209 is actually talking about the Speaker and his functions. Clause 4 in 209 is there because it would have become, if it had been accepted, a function of the office of the Speaker. Now, that we seem to be wanting the Vice Chairman to deputise not to take over when the Chairman is dead. The best we can do is to delete Clause 4 of 209 and when we get to 210 where we are talking of the Vice Chairman, then we can bring in this role of taking over. So, the proposed Amendment should be for the deletion of Clause 4.

THE DEPUTY CHAIRMAN: Hon. Mulenga will that match your proposal.

MR. MULENGA: Madam Chairperson, I entirely agree that it should be deleted for purposes of transferring to another Article.

THE DEPUTY CHAIRMAN: So, there is a Motion on the Floor that we delete from here and transfer to the appropriate position when we are discussing the role of the Vice Chairman.

(Question as proposed, agreed to)

MAJ. KIBIRANGO GYAGENDA (NRA Delegate): Madam Chairperson, I need some guidance and clarification from the Chairman of the Committee 4 regarding the Chairmanship and being a Speaker. If we look on Page 10 of the Report, Article 205 - District Councils, it says that the person elected as District Chairman of Local Government shall be a Member of a Council. Then when we move to Page 16 Article 209 - Speaker of the District Council. It reads, if a district shall have a Speaker elected by the District Council from among its Members, and the rest. The Provision we have just transferred assumes that the Chairman and Speaker are two different people. However, I do not see anywhere any Provision which bars the Chairman from eligibility to be elected Speaker. Can I be clarified by the Chairman.

MR. KATENTA APUULI: Madam Chairperson, we did not forget it as such. However, one Committee Member, Hon. Sserwanga Lwanga will move a Motion to debar the Chairman and Members of the Executive Committee also being Speaker. It on its way.

PROF. KANYEIHAMBA GEORGE (Rubanda County East): Madam Chairman, I have a problem on Clause 3 which reads that the Speaker of the Council shall in relation to the Council perform the same function as the Speaker of Parliament. Madam Chairman, I have looked at the Report of Committee 2 on the National Speaker and also on the original Draft of Odoki. They do not specify the functions of the Speaker. I think the idea was that they were taken for granted at the national level I suppose. Now, is it precisely what we want the District Speaker to do? For example, the national Speaker, we have said, represents Parliament among other things. There are other functions which are conventional, which are not written in this Report. So, I do not know whether the Committee was aware that the Odoki Commission and Committee 2 Report did not specify the functions of the national Speaker. It is my view that they were taken for granted presumably as conventions. Thank you.

MR. KATENTA APUULI: Madam Chairman, the Hon. Delegate pointed out that to me a moment ago. That formulation is taken out of former Article 208 Clause 3, which reads: *"The Chairman, shall be the Speaker of the Council and shall in relation to the Council perform the same functions as a Speaker of Parliament."* Now, we do not also specify the functions whatever those functions shall be, he shall perform those functions. Now, if that is an omission, then it should be addressed because we also lifted it from the Odoki Report.

PROF. KANYEIHAMBA: Madam Chairman, one of the functions which the national Speaker does is to succeed the President when the President

dies. I am sure that is not what is intended in this Clause. Secondly, as I say, he does specifically prologue Parliament, we want the Speaker of the District Council to prologue the Council on his own without consulting other councilors. These really are I think issues we should debate and decide consciously rather than simply. I believe that the Odoki Report also was not fully aware that they had not specified the functions of the Speaker. This is my understanding with reading their Report. So, I think Madam Chairman, we need to address ourselves to what we want the District Speaker to do rather than assume that he will perform the same functions as the national Speaker of Parliament.

MR. SAM KUTESA (Mawogola County): Madam Chairman, I would also like to seek further clarification from the Chairman of Committee 4 as to why they changed the terminology. If you look at the Odoki Draft, the Chairman of the District was actually the Speaker and there was the Chief Executive who was the Chairman. If you look at the definition Clause, the Speaker is defined as the Speaker of Parliament or his Deputy. Now, what good reason did they have to depart from the Draft. Because at the national level, you have the Chairman who should be the Speaker at the district level and the Chairman whom we envisage now would have been the Chief Executive. That is what the Draft had. But I wanted to know the reason that caused the Committee to depart from the proposal. Because this one seems to bring confusion and I think that is where the confusion that is disturbing Hon. Kanyeihamba is. You assume that the Chairman of the District who is now being called the Speaker, will have same functions as the Speaker of the National Assembly. I thought that the Odoki Report made a clear distinction from the Speaker of the National Assembly who is different from the Chairman of the District. That is the Speaker of the District Council and the Chief Executive who is the elected man. I would like to know from the Committee why they changed from the Odoki Draft.

THE DEPUTY CHAIRMAN: I do not know when you arrived. I have been very attentive. I looked all around there was no hand to ask for a clarification. Now when we have finished nearly the whole Clause, you are asking for clarification.

MR. SAM KUTESA: Madam Chairperson, the reason I am asking is because there is already a conflict between it and a definition Clause. The functions are certainly different and you could see that Hon. Kanyeihamba is having a problem. I do not think, Madam Chairman, that we should just feel that our hands are tied if a matter should come up and we could correct. But of course it is in your own judgement to say that we can consider it at the Reconsideration State. I would have thought that if there is no particularly persuasive reasons for having left the proposal used by Odoki, we may wish to look at it and consider retaining it so that we do not introduce the difficulties that are already being seen by Hon. Kanyeihamba.

MR. OMARA ATUBO (Otuke County): Madam Chairman, let me try to assist the Chairman on the issue raised by Hon. Sam Kutesa. I think the principle of the separation of powers in the district has basically been accepted by this House, and I think that is really what the Committee was bringing in their Draft. If you look at Article 207, originally it said, there shall be a District Chief Executive who shall be elected by Members of the Council from among their Members. Now, this principle has been fundamentally changed in the sense that the District Chief Executive will now be elected in a universal adult suffrage by the whole district. There was an attempt to bring out principle which again I think flows at the level of the presidency of the national President.

But my point is this, Madam Chairperson, is the question whether we should use the word, 'the functions of the Speaker will be the same.' Well one could immediately say that was a lazy way of drafting. But no doubt will be better to specify those functions. But I saw that if we could say, because the functions cannot be the same because there are two different institutions. Illegally and constitutionally you cannot have the Speaker of the Council performing the same functions with the Speaker of the national Parliament. However in my view I saw that what they really wanted was that the functions of the Speaker of a District Council would be similar. Thank you

MR. BAGEYA: Madam Chairman, in my humble understanding, it appears we are trying to make the model form of Government at different levels and other than being bogged down by nomenclature. My understanding is that the Chairman of a District, in that jurisdiction, is the President of that District. It could easily go that the Chairman of the

sub-county is the President of that particular part. Now, I am of the opinion that we are tying to make a system which is consistent. That is why at every level, some of these bodies will be required. They will not be necessarily required that a Speaker of a district will work in exactly the same way as the Speaker of the National Assembly, because the magnitude of the job is different. So, it is a question of making levels and the functions will be different, the nature might be different. But by formulating a method of governance of this country, I think we need to be consistent to put up positions that relate to each other. I see no conflict in having a Speaker at any other level, because if we are talking about a district and we talk about a Speaker of a district, we are not talking about a Speaker of the Parliament. If you are talking about the nation, and we talk about a Speaker, it is the Speaker of the National Assembly.

So, Madam Chairman, I do not see what should bog us down, other than trying to change names. They can call that person any other name. But the purpose is formulating a coordinated Government which relates to each other from the very low levels to the highest level in the country. I thank you.

THE DEPUTY CHAIRMAN: Hon. Katenta Apuuli, what did you say about the words, 'same' and 'similar'?

MR. KATENTA APUULI: Madam Chairman, I appreciate the contribution made by Hon. Atubo Omara and we have no problem in accepting the word 'similar? I think he ably put the case with regard to Hon. Kutesa's question. The purpose was really to separate the Executive from the legislature, that why we separated these two offices. So that the Chairman be Chairman and the Speaker or whoever presides over the Council is something different.

It was to achieve that purpose of separation or responsibility, that is why we got problems with the questions raised by Hon. Kanyeihamba. It is for that purpose really that the Speaker would succeed the President at the National level that we had provided for the local district speaker to succeed the Chairman if the Chairman goes for ever. But then, the Plenary did not like that formulation. So we just changed it. However, I will be very happy to accept his word, 'similar' rather than the 'same' functions.

MR. AWORI: Point of clarification. Madam Chairman, I seek further information from the Chairman of the committee, what is the difficulty here in spelling out even four functions of the speaker instead of leaving it in a general term, shall be similar. Why can he just be specific about it?

MR. BIDANDI SSALI (Nakawa Division): Thank you Madam Chairman, I am seeking clarification from Hon. Aggrey Awori. What is the problem, what is the difficulty in his bringing an Amendment containing what he thinks should be contained as the duties of the speaker? In otherwords, instead of now Chairman, clarify why, why, let him move Amendment for inclusion of the specific duties, we debate and we move ahead.

THE DEPUTY CHAIRMAN: Hon. Awori, you are asked to give substance to what you are complaining about.

MR. AWORI: Madam Chairman, without holding back the work of this House, I would like to recommend the Technical Committee looks into it.

THE DEPUTY CHAIRMAN: You are not seconded. So, I think we have seen enough of this, we said we transfer 4, and then we shall see how we amend it, when we reach there. There was only one Amendment on 'same' and 'similar.' I think that is something we can look at together with Technical Committee or something of the sort.

So, I put the question on 209, 1,2, and 3 as amended, that it does stand part of this Constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, we have 209, 2 and 3 as part of the Constitution and 4, transferred to an appropriate location as shall be advised.

MR. KATENTA APUULI: Madam Chairperson, the committee recommends that the former Article 209 be deleted and in its place, a new Article 210 be inserted to read: *"The district Chairman or the speaker of a District Council may be removed from office by the Council by the solution supported by the votes of not less than two thirds of all members of the Council on any of the following grounds;*

(a) Abuse of office,

(b) Misconduct or misbehaviour or,

(c) Physical or mental incapacity. "Madam Chairperson, I beg to move.

THE DEPUTY CHAIRMAN: There is a Motion on the Floor by Hon. Mazima.

MR. MAZIMA ELIPHAZ (NUDIPU): Thank you Madam Chairperson. Madam Chairperson, I would like to move a Motion on paragraph (c) of Article 210, Clause 1. Paragraph (c) in its current form does not properly define what physical or mental incapacity is. So, my Motion is going to define what this one means. I mean what does the physical and mental incapacity stand for. So, it reads: *"Physical or mental incapacity rendering him or her incapable of performing the functions of his office."*

THE DEPUTY CHAIRMAN: Are you on Hon. Mazima's Motion, Hon. Kanyeihamba.

PROF. KANYEIHAMBA: Madam Chairman, my Motion is a different one.

THE DEPUTY CHAIRMAN: No, let us finish Hon. Mazima's.

PROF. KANYEIHAMBA: In that case, in any case, Madam Chairperson, on Mazima's Motion, I would like to support the Amendment he has proposed.

MR. KATENTA APUULI: Madam Chairperson, I would like to implore my colleagues in Committee 4 to accept the Amendment.

DR. MUGYENYI PONSIANO (Isingiro North): Madam Chairman, I just wanted to support Hon. Mazima's Motion in that, it gives weight to the physical and mental incapacity. Somebody may just have a physical disability which may not make him or her unable to perform the functions of his office, he may just lose a leg, but he is able to function. So, I think the Motion is well intentioned and it should be supported.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, Hon. Mazima's Motion as agreed replaces (c) and (c) of the report is revised or improved on.

PROF. KANYEIHAMBA: Madam Chairperson, I want to move in Clause 1, of this Article that the District Chairman or the Speaker or the District Council may be removed from office by the Council by resolution supported by not less than half of all the members of the Council. Madam Chairman - *(Interruption)*

THE DEPUTY CHAIRMAN: Any body seconding the Motion? Your Motion is not seconded. Amendment from Hon...

MR. KAJARA ASTON (Mwenge County South): Madam Chairman, I beg to move an Amendment to Article 210, (1) by adding a paragraph (d). One of the grounds for removal of Speaker which should be brought out very clearly should be removal due to failure to perform the duties of his office. Madam Chairperson, while 210 (ii) provides that Parliament shall describe any other ground and procedure for removal of a district Chairman or Speaker of the Council, I consider this a very important ground which should be mentioned clearly as one of the grounds for removal of chairman's failure to perform the duties of his office. I beg to move.

MR. KATENTA APUULI: Madam Chairman, I would like also to implore my colleagues in committee 4 to accept that added reason for removing. Because the responsibility of the chairman is going to be a lot. If he cannot perform his functions then he should be removed.

MR. MULENGA: Thank you, Madam Chairperson. Madam Chairperson, I think chairman of committee 4 is moving too fast to accept the amendment and to implore committee members. Let us reflect on these other grounds that have been given. In my view they are the ones that should remain. Abuse of office, if the Parliament prescribes the procedure that is a clear reason. Misconduct and or misbehaviour is also clear reason. Then incapacity which renders him unable to perform which is being omitted is also something that is clear, the person cannot perform due to incapacity. But when you say failure we are reaching an area of value judgement. Has he performed has he not performed? It is a very difficult area for stipulating the yard stick on how he fails. Because this is something that is normally left to the electorate ultimately. One is given a term of five years or four years whatever term we fix to perform. At the end of the term you account and the electorate say you performed or did not perform. But if we put it in the constitution as a ground for removal, then it will call

for lots of bickering. The opponents will constantly be saying he not performed let us now remove him. It would encourage a lot of these Motions in the council. I would ask Members of committee 4 and the rest of plenary really not to accept this amendment.

MR. KAYONDE ISRAEL (Gomba County): Madam Chairperson, having rejected Hon. Kanyeihamba's Motion which was giving the council powers to remove the chairman or the speaker by raising two thirds, I see no reason why this should be supported because it is along the same line. Failure is subjective to who judges who for the performance as Hon. Mulenga was saying. Because for the Members of the council, what yard stick will they use to show that this man has failed? The reason why committee 4 wanted to be specific on (a) up to (c), was that, these are known. If the man has abused offices. If the man has misbehaved in his office, and he cannot perform because of incapacity, those are known. But failure anyone will look at from his own point of view. So I think this would create instability in the office of the chairman and the speaker because every time one will say he has failed, and failure cannot be described or defined. I think this one will be dangerous and would create instability in this office.

MR. KADAMA (Butembe County): I would just like to add my voice to support deletion of (d), proposed (d). Because it is very difficult for anybody to have a consensus on failure of the chairman.

MR. NGOBI MATTHIAS (Presidential Nominee): Thank you, Madam Chairperson. I would like to support Hon. Mulenga that it will bring confusion if this idea is brought in of failure to perform. Because unless you are specific it will be very difficult to decide at what point you call that failure. Unless you perhaps you go the whole way and say gross failure. So that you can then count a number of acts which come up to gross failure. But in order to avoid that confusion, I think it is better that we do not include this one. I am a Member of committee 4 and I think the vote we provided for is clear and would avoid problems where one is a Member. All these people that want to take over from him will use any excuse of trying to bring him down. So I think it will be better Hon. Members that we do not include this particular item.

THE DEPUTY CHAIRMAN: Can we have somebody who is supporting the Motion.

MR. BIDANDI SSALI: Madam Chairperson I am just raising caution. Madam Chairperson, the chairman is given specific duties to perform. We have already addressed ourselves to that, but we have also said that the council shall be the highest political authority within the district. Therefore the interest for the advancement of the district is basically vested in the council. Now in the day to day the functions of councils and politics, a chairman could be a failure although he has been democratically elected popularly elected and so on. But he is a failure and because of that it becomes a liability for the development of the district. Now for somebody to say that the council should wait until the end of his period, I think it is a bit unfair. In democracy there is a provision always for a vote of no confidence. I think this is another way of saying, if in the opinion of the council, the chairman is not able to monitor, the chairman is not able to preside over the executive and keep the executive together. I think personally that we need to be very clear in this assembly that in case that happens, the man is a failure not because he is abusing office. Not because of his misconduct or misbehaviour but simply because he cannot perform the duties that we have specified in the constitution.

MR. KATUMBA MATTHEW (Kiboga County West): Madam Chairman, I would like to inform Hon. Bidandi Ssali that we have already passed a provision in the constitution that if a district chairman is a non-performer he can be recalled by the electorate. Thank you.

MR. KUTESA SAM: Madam Chairperson, I oppose the Motion moved by Hon. Kajara. Because we are creating instability in local governments. You have a situation where a person is elected by universal adult suffrage. You could also land yourself as a chief executive of or chairman as we call him, with a hostile council which is for example opposed to you. You could win as an individual but the council may not like you, and they make life difficult for you. Suddenly you have two thirds gang up and overthrow you. I think that the performance of the chairman should be judged by the electorate who elected him, and these people should do so when an election is called again. Otherwise you can put Clauses in this constitution that encourage instability. It is sufficient to say that

a man has abused his office if he is corrupt for example, that is taken care of by (a). If he misbehaves, that is may be bringing the office into disrepute that is I think some kind moral misbehaviour that is catered for by (b). Then we have seen which caters for physical or mental incapacity with the amendment by Hon. Mazima which also we have problems with because I do not think there are varying degrees of mental incapacity. If there are varying levels of mental incapacity, I do not think that any level of mental incapacity should allow him to stay in the office. To confer it and say that it has not rendered you incapable of performing. My point is that let us not put in Clauses, because elections are very expensive all of a sudden two thirds gang up and overthrow you out on a non-profitable basis. That you have failed to perform to their satisfaction. Are you the ones who elected me? If the whole group is not yet dissatisfied with me, councilors, derive mandate from the population. Why don't we wait until we go back to the population and they decide whether I should not stand again or be voted again. So I find the Motion by Hon. Kajara as one which is going to create undue instability in the local government. So I oppose it.

PROF. KABWEGYERE TARSIS (Igara County West): Thank you, Madam Chairperson, I would not like to exaggerate the instability that is implied in the argument presented by Hon. Kutesa. I think there are two things we can look at. We have the electorate that is evaluating the performance of a chairman of a district, but I also think that the council itself has a role of watch dogging the chairman and his or her performance. Now if the council in its wisdom with the support of two thirds, and a Motion debated. And procedures can be provided in their wisdom they think that this person is not performing his duties, I think this person should relinquish the office. Madam Chairperson, if you become RC 5 chairman and you say I will only be judged by the electorate. Think of our electorate. What mechanisms are there that will be used to judge this person? Even when we discussing the whole question of recall, for a Member of Parliament procedures had to be worked out. Those procedures are so difficult in any case that they will be applied in very,very rare situations. But this person will have campaigned throughout the district. There will be declared objectives, in any case he will be heading a government in which he has secretaries with specific departments. And duties to perform in the district and failure can be judged. I do not see why we are thinking that failure is an objective. We have been talking of regimes which have failed in the past. Does that mean that it had been personal and an objective? I believe failure to perform the duties of his office is expressing a very genuine situation, because that office has functions to perform in the district. If he fails to run the economy of the district, if the politics of the area, if he is causing confusion in the district, why should he be stood for four years when the fellow is source of trouble? So I believe that,that will not necessary be called abuse of office the fellow can fail and be judged to have failed and be thrown out by two thirds of the council.

THE DEPUTY CHAIRMAN: Hon. Kabwegyere, I am not biasing you. I just want to ask the question. Are you proposing a time span when that person can be judged? For example, I was told to go home but I have not yet gone home, but if the House had hurried, I would have gone home in two weeks? So what is the time span for somebody to go home? *(Applause)*

PROF. KABWEGYERE: Madam Chairperson, the fact that you did not go home does not mean that two thirds of this House did not vote against you. If they did it might have been difficult. We are thinking of people who will be elected who will have wisdom and who will have a sense of judgement. And I do not think rules are there to be abused so easily.

MRS. MATSIKO WINFRED (Women Delegate-Rukungiri): Thank you very much, Madam Chairperson. I support the deletion of the proposed amendment. Madam Chairperson, I think we are making a constitution which should be clear and not liable to different interpretations. I find measuring failure a very difficult thing, it is not easy to measure how much someone has failed because the standards might be varying from district to district. Madam Chairperson, and I believe that the performance-*(interruption)*-

PROF. SENTEZA KAJUBI (Kyadondo North): Point of information. I would like to inform the Hon. Member on the Floor that we have already made a provision for this argument of vagueness and not being able to perform in chapter 12. Under the public service we made a provision in Article 192 (9) that a member of public service commission may be removed from office by the President

with the approval of the Parliament for inability of failure to discharge the functions of his office. But still if a person is unable according to the council which he is chairing, I do not see how different this one is.

MR. KATUMBA: Point of information. I would like to inform Prof. Senteza Kajubi that the chairman of RC.V is not a public servant. Thank you.

DR. MUGYENYI: Further information. I would like to inform Prof. Senteza Kajubi that public servants have job descriptions. Politicians do not have job description against which you can judge them. *(Applause)*

MRS. MATSIKO: Madam Chairperson, I am sure that the Hon. Member has been satisfied with the reasons that have been brought up. Madam Chairperson I believe that this council responsibility should not be the responsibility you are looking at for the chairman. It should be a collective responsibility. Performance of the chairman should be his and council's responsibility. It is collective responsibility that we are looking at now so it is very difficult in my view to judge whether the chairman has performed. Madam Chairperson this chairman might be heading a council which is relatively poor. For instance, if they do not have enough money to give him for transport, how are you going to say that he has not performed his work? When in actual sense he does not have the means to move coordinating the district and the sub-councils, the lower local government units. So since we cannot rule out such factors Madam Chairperson, I think it is not clear to start judging the chairman that he has not performed. It is not clear all these other views that we brought about, that abuse. Others are measurable you can measure them, you can tell that the office has been abused but it is difficult to tell whether the chairman has failed or not. So, on those grounds, Madam Chairperson, I oppose the amendment.

THE DEPUTY CHAIRMAN: I now put the question.

(Question put and negatived)

MR. AWORI: Point of clarification, Madam Chairperson, having failed to get clarification from the Hon. delegate whose Motion has been defeated, I would like to make another amendment but given the following background. Madam Chairperson, I assume-

THE DEPUTY CHAIRMAN: You move first, then you will be seconded and then you explain. You cannot start with the explanation before you move. Move the Motion you will be seconded then you start talking. So can you please move your Motion and bring it forward.

MR. AWORI: I can formally move the amendment to read as follows. Failure to stick to his party policy. *(Laughter)*

THE DEPUTY CHAIRMAN: You are not seconded. I now put the question that 210 apart from (d), amended (c) by Hon. Mazima that stand part of the constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: With (c) amended and (d) out.

MR. KATENTA APUULI: *Clause (2), Parliament shall prescribe any other grounds and procedure for the removal of a district chairman or the speaker of a council under this article."* Madam Chairperson. I beg to move.

MR. NASASIRA JOHN (Kazo County): Madam Chairperson, I would like to move an amendment on Clause 210 (2), by deleting the words 'any other grounds,' after the word 'prescribe.' And if I am seconded I will give my reasons for that amendment, Madam chairperson.

THE DEPUTY CHAIRMAN: Is that seconded, seconded by Hon. Karuhanga.

MR. NASASIRA: Madam Chairperson, I do not want to waste a lot of our time but we could see that when Hon. Kajara tried to add Clause (d) to 210 which is another ground, how much debate we had here. I am of the view that we should state under what conditions or grounds a chairman or speaker of the district should be removed in this constitution. And we have done that in 210 (1). The rest we should leave to the electorate to decide rather than leave the move to the Parliament to start haunting. Or if I might quote one word 'causing instability' at the district. To start haunting the chairman or the speaker at the district by deciding on what other

grounds he should be removed. Madam Chairperson, I think Clause 210 (1) has lifted the relevant grounds, a chairman should be left to perform his duties until the electorate decided other wise on a next election. Thank you very much.

MR. OBUA OTOA (Erute County North): Madam chairperson, I thought perhaps Hon. Nasasira was going to move that the whole Clause be removed. I really do not see why we should now ask Parliament to start prescribing a procedure for a removal of a district chairman. I am therefore, moving that it be deleted altogether.

THE DEPUTY CHAIRMAN: Are you seconded.

MR. OBUA OTOA: Yes. Now Madam Chairperson, I think it is quite adequate what we have already provided in Clause (1) of this article. If you look at -*(interruption)*-

MR. NASASIRA: Point of procedure. Madam Chairperson I need your guidance. I am assuming you are letting Hon. Obua Otoa's amendment be debated first because it departs furthest. After we have pronounced ourselves on it, say if it is defeated then we will come back to my amendment.

THE DEPUTY CHAIRMAN: But he is asking for deletion, once it is deletion then yours will fall by the way side.

MR. NASASIRA: Madam Chairperson, I am assuming that if Hon. Obua Otoa's amendment is not carried, then we will come back to my amendment.

THE DEPUTY CHAIRMAN: Yes.

MR. OBUA OTOA: Madam Chairperson, I am arguing that Clause (1) is adequate. If you look at the provisions for instance for the removal of the President, these three grounds which are given under Clause (1) are quite adequate. Now we are saying that the district chairman is the chief executive of the district. Is very much in a similar manner that the President is the chief executive of the whole nation. I do not know why we are now thinking that Parliament should again be called upon to put its finger into the affairs of the district to the extent of prescribing this kind of procedure which we are talking about. Madam Chairperson.

MR. BIDANDI SSALI: Point of clarification. Madam Chairperson, I just wanted my colleague Obua Otoa to let us know whether in his view a chairman should be entitled to a defence in case he is accused of abuse of office or misconduct. If in his view yes, does he think we should specify them in the constitution or we could request Parliament to give provision under which a chairman could defend himself?

MR. OBUA OTOA: Madam Chairperson, I think in the same way that the removal of the President of the country is done. The procedure for removing him has been specified under this constitution we could provide that the similar method be used for the removal of the district chairman. Because we already have a method for removing the chief executive at the centre. I do not see why the same procedure cannot be used at the district level to remove the chairman. So, Madam Chairperson, I am appealing to Members that we should not allow this kind of undue interference. We are trying to get the districts to be as independent as possible, not necessarily-*(interruption)*-

MR. NASASIRA: Point of clarification. I wanted clarification whether Hon. Obua Otoa is moving a second amendment before we finish the first. Because my understanding is that his first amendment is that we should delete Clause (2). I do not know whether he is moving another amendment, proposing a procedure of how a chairman should be removed.

MR. OBUA OTOA: Madam Chairperson, I am talking about removing the provision that Parliament shall prescribe the procedure, by deleting the whole Clause.

MR. KWERONDA RUHEMBA (Kajara County): Madam Chairperson, I would like to oppose Hon. Obua Otoa's amendments because he seems to be contradicting himself. He is saying that the chairman could be removed using the same procedure we have used for the President. If you delete this Clause without reference to how the chairman is going to be removed you cannot at the same time say he is going to be removed in the same manner as a President is going to be removed. So I would have liked a situation where he would have suggested an amendment that Clause (2), the chairman shall be removed using the method used against the President.

Madam Chairperson, when Hon. Nasasira moved his amendment I think he had the following substance. He was trying to say we should not leave it to Parliament to start manufacturing new grounds for the removal of the chairman. But the Parliament should after promulgation of this constitution carry out subsidiary legislation to bring about the effect of how the chairman of a district can be removed. And I think that was a genuine concern of Hon. Nasasira and when Hon. Obua Otoa says we should delete it completely I get confused. I am sure he does not know what he is looking for. Therefore, we should totally reject his amendment and go back to Hon. Nasasira's amendment.

MR. MALIRO GASTON (Mwenge County North): Thank you, Madam Chairperson. Madam Chairperson, I oppose the amendment moved by Hon. Obua Otoa to delete this Clause for the following reasons. Madam Chairperson, if you remember we provided for the method for the removal of the President. Especially when you consider paragraph (c) of mental or physical incapacity which requires that there should be some medical check up by setting up a tribunal and the rest. Hon, Obua Otua is saying that we remove all that and then the councillor, two thirds of the councilors will be wise enough will act as medical officers and determine that a chairman is physically and mentally incapacitated. I think he is mistaken. Madam Chairperson, what Clause (2) is saying is that, that procedure should be prescribed by Parliament. We were only trying to save time by not prescribing it here.So that in another legislation in a statute then Parliament shall prescribe how this one can be done. The only alternative would be to refer to the methods which we used for the President which I think may not be necessarily the same because the ones for the President is very elaborate. You may find that Parliament wants to put other methods which are less elaborate than those prescribed for the chairman. Therefore Madam Chairperson, I oppose the amendment, and I think we should go to Hon. Nasasira's which is more reasonable, I thank you.

THE DEPUTY CHAIRMAN: Hon, delegates, this is clear whether you want this article, amend it suitably or we do not want it. So I put the question whether we delete it or not,

(Question put and negatived)

THE DEPUTY CHAIRMAN: So we go back to (2) and then have it amended.

MR. NASASIRA: I think I had moved my amendment and talked on it now it is open to the House to debate with your permission.

THE DEPUTY CHAIRMAN: Can you remind us of the exact wording?

MR. NASASIRA: Madam Chairperson, my amendment was that, we delete the words, 'any other grounds' so that the Clause (2) now reads as follows: *"The Parliament shall prescribe the procedure for the removal of a district chairman or speaker of the council under this article."* Madam Chairperson, I beg to move.

THE DEPUTY CHAIRMAN: I now put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So 210 (2) as amended remains.

MR. KATENTA APUULI: Madam Chairperson, the committee recommends that former Article 210-

THE DEPUTY CHAIRMAN: No, are you moving to -

MR. KATENTA APUULI: We have come to the end of the article.

THE DEPUTY CHAIRMAN: That is what I wanted from you. So now I put the question on 210 that as amended do stand part of this constitution.

(Question put and agreed to)

MR. KATENTA APUULI: Thank you Madam Chairperson. I will recommend that the former Article 210 in the draft constitution be deleted and in its place a new Article 211 be inserted to read: *"There shall be an executive committee for each district council which shall perform the executive functions of the council."* Madam Chairperson, I beg to move.

THE DEPUTY CHAIRMAN: Now put the question.

(Question put and agreed to)

MR. KATENTA APUULI: *"Clause (2), an executive committee shall consist of (a), the district chairman and (b) such number of secretaries as the council may decide being persons nominated by the chairman from among members of the council and approved by a majority of all members of a council."* Madam Chairperson, I beg to move.

MR. TIBAMANYA URBAN (Kashari County): Madam Chairperson, my neighbour here Hon. Sserwanga Lwanga wanted to move an amendment to insert a new sub-Clause to be numbered as (c).

THE DEPUTY CHAIRMAN: Hon, Tibamanya why don't we complete what we are considering,then after that you can give us the information. Because an insertion even if it comes last pressmen can always find ground by the technical committee or the drafting. Let us complete this one then you will move it again you will bring your information so that we do not mix up things. So we are on 2 (a) and (b) of 211.

MR. KIRENGA EMMANUEL (Mityana North): Madam Chairperson, I am not happy with the Clause as it stands. I am not happy with leaving the number of the members of the secretaries to be decided by each district council. Because we might have a situation where one district might decide to have so many secretaries. As many as 25 it might have or more than ministers in the central government. I think, Madam Chairperson, it will be better if could either leave this work to Parliament to decide how many secretaries should be in each district to parliament or determine them now. Otherwise we are going to have disorders everywhere in the district, with each district having its own number of secretaries different from the other then there will be chaos in the whole country.

MR. ELYAU: Thank you, Madam Chairperson. I think the committee is right. Madam Chairperson if you look around Uganda you find districts are behaving as we are. Some are small are short and so on and some areas are bigger. Now if you put 20 members and yet the size geographically is big then you will cheat the district. Let us allow the district council to see because we shall determine the sub-counties of a particular district those ones will determine how many members would come. And I think by that size it makes it very easy to see how many secretaries will be needed. So I think let us leave it to the district council itself to see the size and capacity.

MR. KWERONDA RUHEMBA: Madam Chairperson, if we leave these secretaries to be decided on by the council, I agree with the previous speaker that we may end up having as many as possible. Everybody among the members of the councils would like an executive function. Madam Chairperson, I believe the decentralization statute had spelt out these positions and the way they were spelt out the number was not exceeding 9, if my recollection is correct. And to allow the council create more we may have disparity between districts. Some districts will have more secretaries while others may have less and so on. I would like Madam Chairperson, to stick to what the statute had spelt out so that we have uniformity in the entire country as regards these secretaries which form the executive functions. And I do not know what rationale the committee used to leave this suggestion open.

MR. MALIRO: Point of information. I would like to inform Hon. Kweronda Ruhemba that when we were considering this article we were not thinking that the decentralization statute will be in operation all the time. We were looking at the future. We were talking in terms of local councils not necessarily RCs which elect their secretaries in the number of 9. We thought that if there is a small district which has got less resources, it can decide to have a few as five secretaries and those secretaries can combine certain activities and then do their work. In another district which is very big, which has got more resources it can have also as many as 10. What I think, Madam Chairperson, is that may be we could fix the upper limit but the lower limit should not be fixed so that it should depend on the income of the district.

MR. KWERONDA RUHEMBA: Madam Chairperson, I was aware of that but why can't a secretary hold two portfolios, we can say secretary for information and mass mobilisation. That would reduce the number of secretaries downward.

DR. KABERUKA WILLIAM (Ndorwa County West): Point of information. I wanted to inform Hon. Kweronda that actually the original Clause (4) is also very open. Because (j) which is the last gives the district councils a mandate to put on any

other secretary which they feel is essential in their district. So I think the formulation of committee 4 is sufficient. I thank you.

LT. COL. KIIZA BESIGYE (NRA Delegate): Madam Chairperson, districts cannot have the same tasks. Every district has its own tasks. In some districts you will have secretary may be for ending nomadism, others like Kabarole you may have rehabilitation against earthquake which is a major factor. There are many varieties in the various districts. I think it would be not good for us to fix the number or the type of tasks. Secondly we are decentralizing, we are giving power to the district council, the district council is going to be a Parliament of that district. It is going to determine the affairs that affect the development of that district and the welfare of the district as a whole. Therefore, let us not on the one hand wish to decentralize and on the other hand to retain power to determine what is good for them. I think this provision as proposed by the committee is very reasonable and is in line with the intention of the decentralization programme of letting decisions be taken by the district councils. District councils are reasonable organs of course, we expect they will be and they are working in the interest of the district. Therefore, I do not see them without resources creating many portfolios in their executive. I therefore, Madam Chairperson, support that we leave this provision of the committee as it is.

MR. KIWANUKA MUSISI (Buikwe County South): Madam Chairperson, I want to emphasise the point which Hon. Kiiza Besigye has just pointed out. We are devolving powers and responsibilities from the centre to the people. I think this one as a principal must be clear in our heads. We should also as much as possible try to avoid taking the role of big brothers where we think people down in the districts are of lower quality. They do not know what is right for them, somebody must decide for them. For that matter, Madam Chairperson, even what is in the draft as a matter of principal is wrong. It is up to the original, the Odoki draft. The districts know better what suits them, and on top of that they will be responsible for their own budgets which budgets they will have to implement and which budgets will be the basis of judging whether they have performed or not. So it would not be reasonable to think of a situation where a tiny district with just a few millions of shillings will decide to have a committee, an executive committee of twenty people. I think these are far fetched imaginations. We should allow the people in their Councils to decide what is suitable for them. I therefore wish to go along with what Committee Four recommended.

MR. KASAJJA BYAKIKA (Bunyole County): Madam Chairperson, I would like to move an amendment to (d). This amendment should read: *"An Executive Committee shall consist of secretaries not exceeding nine in number as the Council may decide,"* and the rest of it.

THE DEPUTY CHAIRMAN: Is he seconded? Okay, he is seconded so can you speak on your Motion please.

MR. KASAJJA BYAKIKA: Madam Chairperson, people have expressed the opinion that some districts can be larger than others and they may have more functions depending on their economy and the resources. Therefore, Madam Chairman, I think it is very fitting that we fix the top, the biggest number of secretaries but leave various districts to decide depending on their conditions as to how many secretaries they can have.

MR. KWERONDA RUHEMBA: Madam Chairperson, I want to dispel the fears about size. United States is about ten times as big as Uganda but they have lesser ministries than Uganda has. So the question of districts having different sizes should not bog us down.

THE DEPUTY CHAIRMAN: So you think we fix the number or it remains as it is.

MR. KWERONDA RUHEMBA: We fix the number and then you can have one secretary operating in two portfolios.

MR. NGOBI MATTHIAS (Presidential Nominee): Thank you very much, Madam Chairperson, I would like to support this amendment of fixing the maximum number of nine. The smaller councils can have less numbers but the top number may be big councils. This I think will give certainty to what should be done so that one does not become extravagant. There are cases, Madam Chairperson, where perhaps a particular individual member of the council may want to be accommodated. If the Chairman has a little bit of tendency or weakness or want to get bigger support, he may go beyond what

is reasonable. I think if we have a maximum number fixed, he is not going to hamper or hold any function or performance of duty. It seems reasonable that we have a maximum number within which the chairman can function. Thank you, Madam Chairman.

MR. LIIGA ALOYSIUS (Buvuma Islands): Thank you, Madam Chairperson. Madam Chairperson, I do support the Motion on the Floor that we do fix a maximum number of secretaries of these councils for all the districts but we leave it to each individual district to find its optimum. Madam Chairperson, I am sure a district like Kalangala and Rakai would not exhaust the number nine by virtue of their small resources and also the nature of their size but the districts like Kampala can even wish to get many *(Interruption)*

THE DEPUTY CHAIRMAN: Order, order, members on my left.

MR. LIIGA: The district like Kampala or even Mukono could even wish to get more than nine. However, in leaving this option open I can see some abuses. One of them, when you go back to political parties the big temptation for the Chairman to reward some of his supporters by creating unnecessarily departments or secretariats and this will be at the expense of the development of the district. I can also see that we need to give national guidance to these district councils within which they should operate on whatever resources they do have. Madam Chairperson, with those words I would like to move just a small amendment similar to in terms to the one that is now on the Floor. The amendment is this. We fix such a number of secretaries and in (d) here we add the following words, 'Not exceeding nine as the councils may decide,' blur, blur, blur. Thank you, Madam Chairperson, so I beg to move. Thank you.

PROF. NSIBAMBI APOLO (Presidential Nominee): Thank you, Madam Chairperson. I would also like to support that amendment. It has always caused me a lot of anxiety to note that the ordinary person is suffering a lot. We spend a lot of our money either carrying out unnecessary ceremonies or having blotted administrations or institutions. That has done a lot of havoc to the periphery countries which cannot afford to make this kind of mistake. And of course I should add that at the moment there is a problem namely that some RC's are dividing the loot amongst themselves. The secretaries, when they have contracts, these contracts are divided amongst themselves. I happen to be doing some research on local authorities and their performance and this is one sad thing I have discovered. They actually appropriate the contracts amongst themselves. So this kind of arrangement will actually limit this kind of arrangement, this kind of economic stupidity as I would call it which is ubiquitous or rampant. I strongly support the amendment.

DR. MAGEZI DAUDI (Jinja Municipality East): Thank you very much, Madam Chairperson. Actually, Madam Chairperson, I was seeking some information from the chairman of the committee. The first one was that I wanted a clarification whether these members are going to be on full time basis or not under decentralization. This is my first position. The second one was whether they did consider that the chairman could nominate members of the council and outside the council to be on the executive. Did they consider this scenario whereby the chairman could call in somebody from the district but outside? Thirdly was whether the executive if it is on full time basis will then remain as councilors. The members remain as councilors or their places can be filled up again, since they are full time executive. They become an executive but not representing their original constituencies. Finally the fourth point, Madam Chairperson, was whether we should not fix a simple majority of members of the council present rather than leaving it as a majority of members present. If I can get clarification to that there is a possibility that I may move some amendments to effect some of those positions before I have pleaded. Thank you very much.

MR. KATENTA APUULI: Madam Chairperson, I would like to reply Hon. Magezi that our assumption is that the executive will be working on a full time basis considering the responsibility of decentralisation. The responsibilities as you will see as we develop this Chapter. There is immense work to be done and, therefore, that work can not be done on a part time basis yet the council sits on part time basis. But the executive should remain on duty on a full time basis. That is the reason why we did not put a figure as to how many because different districts have different capacities to pay for these secretaries. That is why we thought that figure should be determined by the council itself in ac-

cordance to its means to employ these people on a full time basis. We did not consider that the secretaries should be appointed from outside the council, we already provided and passed that area that they should come from within the council and when they are appointed as executives they retain their positions in the council. Now, whether it should be by a simple majority or not, we think that really a simple majority of members attending at any one time is far too small for them to approve the little district cabinet as we might consider it to be. Therefore, that is why we provided for an absolute majority that to approve this little district cabinet an absolute majority is essential. We did not go to the two-thirds but we think that an absolute majority of all the members is good enough to approve this simple cabinet of the district. I thank you.

DR. MAGEZI: Madam Chairperson, for avoidance of doubt can I beg the chairman of the committee to include an amendment on Clause 2 (2).To read that, 'a full time executive committee shall consist of,' because it is so far not mentioned anywhere that it is a full time executive.

THE DEPUTY CHAIRMAN: Is that seconded?

MR.BYARUGABA ALEX (Isingiro South): Procedure. Thank you, Madam chairperson. I rise on a point of procedure. We have before us, Madam Chairperson, an amendment by Hon. Byakika which we have not disposed of. How again do we then jump to Hon. Magezi's amendment? Have we decided to throw away Hon. Byakika's amendment?

THE DEPUTY CHAIRMAN: Hon. Byarugaba, Hon. Magezi was calling for clarification. The Chairman has clarified, he was giving his opinion. I have not asked for who is seconding the Motion but it is something for you to think about. So we can clear Hon. Byakika's Motion of not exceeding nine then after that we can consider Hon. Magezi's proposal.

MR. BWANIKA BBALE (Katikamu North): Thank you very much, Madam Chairperson. I wish to support the Motion by my neighbour Kasajja Byakika that we fix the number of the executive up to the maximum of nine people.

MR.KWERONDA RUHEMBA: Madam Chairperson, if my ears did not deceive me Hon. Liiga moved an amendment. It was to this effect on (b),'such a number of secretaries not exceeding nine as the Council may decide.' Now I can hear Hon. Kasajja Byakika moving almost a similar amendment. Now which one is which. Madam Chairperson, I would like to suggest that we first of all dispose of Hon. Liiga's amendment before we come to Byakika's because Byakika's - *(Interruption)*

THE DEPUTY CHAIRMAN: Okay let us do like this. Hon. Liiga's Motion is still that of Hon. Byakika. So Hon. Liiga moves and Hon. Byakika seconds, I think that was the intention. Hon. Liiga moved and Hon. Byakika seconded.

MR. BWANIKA BBALE: Madam Chairperson, thank you very much. I was saying that we must fix a maximum number of these executive to avoid a situation whereby the chairman would be pressurised to increase the number so that he keeps his position secure. The situation in the council whereby, for instance, if they want to move a vote of no confidence. If somebody is trying to cook up that Motion of no confidence the chairman may appoint his person to the post of executive and suffocate any initiative that will be coming to remove him from office. Secondly, Madam Chairperson, in the Chapter concerning executive we fixed the number of Ministers up to something like twenty-one. I do not see any problem in this Assembly for us to fix the number of the people in the executive. So my view, Madam Chairperson, is that we fix the number but this number must include the chairman. The chairman must be part of the nine in number so we must see how we can accommodate the chairman. Because if we leave the chairman out that will mean that we are going to have ten executive committee members. My view is that we should have the chairman included in the number of the nine people we are proposing. Thank you very much.

MR. KASAJJA BYAKIKA: Madam Chairperson, I think I agree with Hon. Bwanika Bbale that the number of nine people should include the chairman. In this case the amendment will read as follows: *"An executive committee shall consist of secretaries not exceeding nine in number including the chairman as the council may decide."*

THE DEPUTY CHAIRMAN: So that means (a) will be removed. Because all we had to say is that the executive committee shall consist of the chair-

man which means he is already a member. This means we reduce the other number to eight.

MR. KASAJJA BYAKIKA: Okay, we make the number eight then so that it is reading exactly as I had proposed before.

MR. MULENGA: Thank you, Madam Chairman. I wanted to remind the House about the Vice Chairman while we are counting, we have more or less agreed that there is a Vice Chairman. So would this be (a) Chairman, (b) Vice Chairman, (c) such a number of secretaries not exceeding seven? I am addressing this to the Movers.

THE DEPUTY CHAIRMAN: Let us hear this from Hon. Liiga. Hon. Liiga are you with us? Can you make a comment on that one please?

MR. LIIGA: Thank you, Madam Chairperson. I am grateful to Hon. Mulenga for drawing our attention to the fact that there is a vice chairman which position was hidden until at the end of the paragraph. Madam Chairperson, I would go along with the formation of Hon. Mulenga and the paragraph, Clause 2 now reads as follows: *"The Executive Committee shall consist of (a) the District Chairman, (b) the vice Chairman and (c) such number of secretaries not exceeding seven as the council may decide."* That will bring the total number to nine.

MR. SEBALU KENNEDY (Youth - Central Region): Thank you, Madam Chairperson. I would like to seek clarification from the Movers. They tend to stick to the number nine and I would like them to clarify to me what is magical about the number nine. I appreciate the fact that, that has been the number that has been going on in the RC's. But you may find that in some districts or some areas this number or these numbers of secretaries have not been found to be adequate. They may need room for increment in some aspects. So if we just leave it like that then we do not allow any room for manoeuvre for the districts to improve in their performance if we tie it to that. So I was of the feeling that since nine has been seen to be working, in this new Constitution we should provide for slightly more number to give room for those which may wish to increase the secretaries and improve on their performances. I am considering eleven so that the districts which are comfortable with nine can go with nine. Those which feel that they could increase the secretaries, therefore increasing their level of performance and improving on it, could use that latitude that could be created. Otherwise it appears that the number nine is everything that can do wonders in the districts. I think we would just be maintaining a status quo without giving these districts room to improve and yet we say we are - *(Interruption)*

THE DEPUTY CHAIRMAN: Is that seconded? He is not seconded.

MR. RWABIITA DEO (Ibanda South): Thank you very much, Madam Chairperson.

MR. SEBALU: It is seconded.

THE DEPUTY CHAIRMAN: Seconded by who? I want him to speak out.

MRS. MASIKO: I am seconding.

THE DEPUTY CHAIRMAN: Okay, it is seconded by Hon. Masiko, that we increase the number but Hon. Delegates I think let us move this way. What I can see, now we are debating even nine has not been decided on. Let us first decide whether we should fix the number or not then after that we decide on the number. Because we are debating as if the number has already been decided because the Motion was that we fix the number and we have not agreed whether we do or not. So let us first decide whether we fix a certain number of secretaries or not then after that we shall see how many.

MR. BIDANDI SSALI: Madam Chairman, I thought you had ruled and I was debating your proposal to support that and to really appeal to my colleagues humbly that it is very dangerous to constitutionalise this number or to do with districts. If we wanted, we fear that some districts may misuse this open gate then we can add a (c) to the effect that Parliament may limit the number of secretaries. But it is unfortunate when you say the Parliament of the District is the council and that one we have constitutionalised. At the same time you are saying you must not appoint more than this. We should give Parliament power for them to use it only when they find that the thing is being abused. Otherwise it is not fair for us to play big brother to that extent of constitutionalising this number. I am just appealing, Madam Chairman.

MR. SEBALU: Information.

MR. KAVUMA STEVEN (Kyadondo South): Thank you Madam. If Hon. Bidandi Ssali had only managed to read page 40 paragraph (a), that one is coming. A second information. I wanted to give information to Hon. Liiga that if also he had managed to read Clause 4 on page 18 which says that there shall be a vice chairman of the Executive Committee who shall be a person nominated by the district chairman from among the secretaries. So the vice chairman will be from among the secretaries because if you create (a), if you create the office of the vice chairman, may be I think in the committee's mind they thought that he would be a redundant person. So he will be just a secretary and then just add the vice chairman just to deputise. I ask through you, Madam Chairperson, whether Hon. Liiga has considered Clause 4 in view of his amendment. Thank you.

MR. LIIGA: Thank you, Madam Chairperson. I had already looked at it, that is Clause 4 and I was going to move a small Motion when we come to that clause. So I think we still go along with the proposition as I have explained after Hon. Mulenga's clarification we still maintain that number nine. Now I think, Madam Chairperson, we have two Motions, Hon. Masiko is proposing eleven and we are proposing nine. I think you are in a position now to decide on what to do. Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: Let us hear from Hon. Rwabita and then we can hear Hon. Musekura.

MR. RWABIITA: Thank you very much, Madam Chairperson. Madam Chairperson I want to oppose the Motion of numbering or setting numbers for these secretaries. Madam Chairperson, we are making a constitution for posterity. Uganda is a young nation, it is growing and in future there are going to be a lot of new needs in every district as we develop. Therefore, setting numbers is going to limit our prospects for development in each district. Madam Chairperson, today we are talking of importance of environment. This is an area which needs scrutiny by every district and perhaps one day we might need a secretary for that. We look forward for various sources of energy, we are talking of doing research in many aspects of our resources. All these one day might need secretaries in every district or districts that are concerned. Therefore, Madam Chairperson, it will be I think a wrong principle to give just numbers for sake of trying to fit in some of these people. For example, the House has been failing to fit in the chairman and the vice chairman. They are looking for where to place them. But when you leave it to the district council, they will make the committees and combine them as they so wish or as long as their resources can afford. Madam Chairperson, definitely when these councils are choosing the chairmen of these secretaries they normally go for the right person who has got experience and performance. For example, the chairperson or the chairman of health committee must be knowledgeable about drugs and medicine. A chairperson or chairman on livestock he should have some knowledge on livestock. So if you say a vice chairman must be that secretary, supposing he does not fit or he is not having experience or efficiency? When you leave it to the District Council with their limited resources they are going to elect or chose the secretary they want according to their means. I think that will help them to develop better rather than telling them you must have nine when they cannot even afford them. So the question of numbering as Hon. Bidandi Ssali has said is dangerous and limits the people's advancement in future so I oppose the Motion.

THE DEPUTY CHAIRMAN: Hon. Delegates we should not also lose sight of possibility of amalgamating departments. For example, we have agriculture, animal industry, forestry. One time it was one ministry then we have commerce, cooperatives and industry and technology, was also one ministry. Women, Gender, Community Development and Education and sports, that was another argument. Definitely we can amalgamate logically within the nine. Let us hear from Hon. Musekura.

DR. MUSEKURA THADDEUS (Bufumbira North): Thank you very much, Madam Chairperson. Madam Chairperson, I would also like to very strongly and vehemently to oppose the idea of fixing a number in this constitution. We must leave districts free to decide the actual number for their individual districts. Madam Chairperson, it is very important to allow the individual districts to decide to have more or less than nine as the case may be. Earlier on we agreed that power belongs to the people. So I think it is really important that we allow these people to decide because when the district council is making such a decision it is doing so on

behalf of the people of that district. Madam Chairperson, in Uganda we have a lot of diversity and variations in the nature of the various different districts. Some districts, Madam Chairperson - *(interruption)*

THE DEPUTY CHAIRMAN: Mr. Musekura, I see a persistent hand from Hon. Kweronda Ruhemba.

MR. KWERONDA RUHEMBA: I would like, Madam Chairperson, to be clarified by the speaker holding the Floor. Can he clarify why we have it logical to stick to the number of ministers and ministries and yet he does not find it logical to fix the numbers of secretaries at the district?

MR. MUSEKURA: Madam Chairperson, we are decentralising and some members already have ably articulated that they may need more than nine. Others may need less than nine. So in this case, Madam Chairperson, since we are decentralising and putting power in the hands of the people and the various districts depending on their capabilities should be free to decide on the optimum number suitable for them. Madam Chairperson, I was saying that some districts are richer. Therefore have more resources and bigger budgets which can support a bigger number of secretaries. Whereas others are very poor and cannot afford the luxury of having a big number of secretaries. Also some districts have got peculiar needs as Hon. Kiiza Besigye ably articulated. So they may need special portfolios to cater for these unique needs and circumstances. Also, Madam Chairperson, assuming that each sub-county sends one councillor to the district council. Let us say you find some districts have less than eighteen councilors in total or eighteen sub-counties. You have fixed the number let us say to be nine, that would mean that actually the executive committee would dictate to the entire council. I think that would be very unhealthy. So such a district council in its wisdom would decide to have a smaller number of secretaries combining various portfolios such that the executive is smaller than the rest of the members of the council. The circumstances of dictatorship by the council executive do not arise.

THE DEPUTY CHAIRMAN: Let us hear from the chairman of the Committee.

MR. KATENTA APUULI: Madam Chairperson, assuming that we shall pass Article 231 Clause 2 (c) which states that Parliament will limit the number of political offices that may be created by the local governments, I would like to appeal to Hon. Delegates to drop this issue of the number. Already as we are debating here you saw that people talked about seven, others talked about nine and others talked about eleven. At this point in time it is not possible for us to determine accurately which is the right number to put in the Constitution. I would really like to appeal to you that provision is already made where we are heading to that Parliament will limit. I would also like to say here, Madam Chairperson, that when you mention the number, you give an indicator that should be the number. You actually take away the ability of a smaller district to use a smaller number because people will start agitating saying the Constitution say nine, why are you suggesting five? I really like to appeal to Hon. Delegates that provision is adequately put in the Constitution or suggested by Committee Four that this number can be limited if Parliament in its wisdom sees that the number is too much.

DR. ODUR DICK (Dokolo County): Thank you very much, Madam Chairperson. Madam Chairperson, it is not really fair for us to sit here and think of numbers for the districts. The number of secretaries will be determined by the economic activities in those districts. If we sit here and fix numbers we really will be limiting some districts from carrying out economic development. We will also be imposing our decisions on smaller districts who will not be able to accommodate such numbers of secretaries as we have decided. So I would like to appeal to my fellow Colleagues that it is not fair at this stage for us to fix any number in respect of secretaries for districts. Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: So let us put the question on Hon. Liiga and Hon. Kasajja Byakika's Motion.

(Question put and negatived)

THE DEPUTY CHAIRMAN: So we go back to (c). We have: *"The Executive Committee shall consist of (a) the District Chairman, (b) the Vice Chairman, and (c) such members of secretaries as the council may decide being persons nominated by the Chairman from among members of the council and approved by a majority of all members of the council."* I put the question that this clause do stand part of this Constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So at this juncture it is 1.00 O'clock, we go for lunch and we come back at 2.30 p.m. so we stand adjourned. Hon. Magezi we will start with you when we come back.

(The Assembly adjourned for lunch and resumed at 3.00 p.m)

THE DEPUTY CHAIRMAN: Hon. Delegates, can we sit down and start our work? Hon. Katenta Apuuli, can you continue from where we stopped in the morning?

MR. KATENTA APUULI: Madam Chairperson, we had just finished Clause 2, and I am ready to get on to Clause 3. *"Clause 3, the secretaries shall head standing committees which shall carry out such functions as shall be assigned by the council."* Madam Chairperson, I beg to move.

THE DEPUTY CHAIRMAN: Order, Hon. Katenta Apuuli, it seems Hon. Wanendeya has a problem.

MR. WANENDEYA WILLIAM (Budadiri East): Thank you, Madam Chairperson. In view of Clause 2.11(a) and (b), I wanted to add an extra subclause to be (c) and to read as follows in view of what we passed in determining members of district executive committees. Madam Chairperson and Hon. Members, I wanted to add (c) to read as follows: *"A district council seeking to have more secretaries shall pass a resolution or notion supported by two thirds majority and approved by the minister responsible in writing."* Madam Chairperson, before somebody says no, I want to

THE DEPUTY CHAIRMAN: Excuse me, anybody seconding that Motion? Wait Hon. Wanendeya, I am asking, I want to see somebody seconding the Motion. Hon. Wanendeya, your Motion is not seconded, therefore, even clarification is not called for.

MR. WANENDEYA: I have been seconded, Madam Chairman.

THE DEPUTY CHAIRMAN: Okay, seconded by Hon. Magezi. Hon. Delegates, we are on Article 211, and we finished 211.1, 211.2, we are going to 211.3, but we have not finally put the question on 212. Okay, Hon. Kweronda.

MR. KWERONDA RUHEMBA: Madam Chairman, Clause (b) which we passed is open-ended. Is it now in order for Hon. Wanendeya to say that the number of secretaries should not be expanded without the two-thirds majority when (b) is open-ended? Is he in order?

THE DEPUTY CHAIRMAN: Let him make an interpretation, then I will know whether he was in order or not.

MR. WANENDEYA: Thank you, Madam Chairperson. I was of the view, unless somebody can say otherwise, that we said the district Executive committee shall have a Chairman, Vice-Chairman, and other executives. That is what we said - *(Interruption)*

THE DEPUTY CHAIRMAN: No, no, read the whole thing, you have your text.

MR. WANENDEYA: My text, Madam Chairman, (d) says: *"Such number of secretaries, as the council may decide, being persons nominated by the Chairman from among members of the council and approved by majority of all members of the council."* Madam Chairman, unless we pass it this way, but I was of the view that it had been passed. In order to add on the number of secretaries to be increased, then this clause in itself is not open-ended as I would -*(interruption)*

THE DEPUTY CHAIRMAN: But increased from which figure. We do not have a base indicated in the clause, so increasing what from what?

MR. WANENDEYA: We had fixed it, Madam, to nine and unless otherwise.

THE DEPUTY CHAIRMAN: No, no, were you out of this House when we finished our deliberations in the morning? I think you are out of order, Hon. Wanendeya, Hon. Katenta Apuuli proceed.

MR. KATENTA APUULI: I thank you, Madam Chairperson. Clause 3, *"The secretaries shall head standing committees which shall carry out the functions as shall be assigned by the council."* Madam Chairperson, I beg to move.

MR. KADAMA: Point of clarification. Madam Chairperson, I would like to seek clarification first from the Chairman. I just wanted to know whether any of these clauses, especially, the ones we have

discussed and the ones we are discussing now. Whether there is any certainty that the secretaries will be full time members. Because he told us earlier in the morning that they will be full time members.

THE DEPUTY CHAIRMAN: Hon. Katenta Apuuli, better compile these queries and then you shall clarify later.

MR. KARUHANGA ELLY (Nyabushozi County): Madam Chairperson, I am a member of committee 4, and I am bound by our decisions. But Dr. Besigye a few minutes before he walked out came to me and drew my attention to a point which I thought was valid. I asked him to pass it on to somebody, and apparently it seems he did not, because I do not see people raising it. So, with the permission of my Chairman, may I raise it because I think it is for the general good?

THE DEPUTY CHAIRMAN: You see, there is a Chairman of the committee and the Chairman in the Chair. Which of the two?

MR. KARUHANGA: You Madam.

THE DEPUTY CHAIRMAN: As long as it was not debated and exhausted, in which case I have to consult the Chairman -

MR. KARUHANGA: It was not debated in our committee.

THE DEPUTY CHAIRMAN: Okay.

MR. KARUHANGA: I can be reminded. Madam Chairperson, if you read Clause 3, it reads: *"The secretaries shall head standing committees which shall carry out such functions as shall be assigned by council."* Now, the point raised here is that we should not constitutionalise these secretaries also being heads of standing committees. If you look at the national level what we do, we try to separate the Executive from the Legislature. We have committees of Parliament, they are headed by Parliamentarians who invite the head of ministries to come and report. Then we go to the whole Parliament to pass Bills in the normal way. At least, there is a system of accountability and checks and balances flowing through. Madam Chairperson, I do not want to take a long time on this. I think the words 'shall head standing committee,' should be deleted so that the councilors who are not elected as secretaries can elect a person who can be the Chairperson of this. I would welcome other people's views on it and, maybe, I can also be educated and take advantage of that.

MR. KAVUMA: Point of clarification. Madam Chairman, thank you. I wanted to know if Hon. Karuhanga could clarify to me. Whether in view of the very good arguments he has put across, and the fact that in many of, even the existing district councils, the councils have changed the position where members of the executive were heading committees.And have left them to be ordinary members of the council, which I think is also reasonable. Whether Hon. Karuhanga moved an Amendment removing the words 'referred to' and if so I would want to second him, but I wanted clarification from his first.

DR. BYARUHANGA: Thank you, Madam Chairperson. I want to come in because Hon. Karuhanga was in our committee when we discussed these issues and yet he was quickly taken up by the suggestion of Lt. Col. Besigye. Article 205.1 says: *"A local government shall be based on a council which shall be the highest authority within its area of jurisdiction and which shall have legislative and executive powers to be exercised in accordance with this Constitution."* The council we have at the district level, Madam Chairperson, is different from the Parliament of the national level. The council is the government at district level. So, this argument of Hon. Karuhanga does not arise unless we go back and change Article 205.

PROF. KANYEIHAMBA: Thank you, Madam Chairperson. I want to re-emphasise the point made by the immediate previous speaker, in that I think people are visualising a situation where these secretaries have an independent government and councilors are in Parliament. But that is not the position. These secretaries will have no other responsibility of portfolios other than these departments, which they will be heading. The point is this that the council itself really is the government of the district. If you visualise the secretaries as persons who hold office, the only office they can hold is the one which is being assigned to them under this clause. They do not have any other responsibilities beyond that. So, I wanted to say that the previous speaker's clarification seems to be more logically in accordance with what we are establishing than otherwise.

MR. KATENTA APUULI: I thank you, Madam Chairperson. I hope Hon. Karuhanga could remember, this matter was extensively debated, and we settled for this format, after considering a number of things. We considered that at the district level it is not possible to stretch the band of separation of powers to the same length as at the national level. We also considered the cost. Once you begin to separate the work of secretaries from chairing these committees and you assign that to another person, it means that other person is going to claim money from the district council for doing that work. We also considered the issue of the stock of people. How much and what type of manpower does each district have? Say you take out your nine members of the executive committee, so you take those out and they are not part of your council and they are not available to you. Now, you have to take out another nine to chair the subcommittees. Not so many districts have that kind of stock of people with ability. So, we thought that since there is a limit to the people in the district who are able, we should try and combine these responsibilities. On the other hand we also considered the issue of logistics. These committees we are talking about are committees in which members of the legislature, which is the council, sit. Members of the government, which is the executive, sit and also bureaucrats, technocrats sit in these committees. So, we thought that the most able person in terms of logistics, inability to mobilise, inability to accommodate, inability to organise a meeting would really be the secretary who is a member of the government. And we did not think that he or she being the Chairman of the committee would harm the work of that committee. In any case, he has only one vote, and if the members of the council are strong enough they should be able to influence him, when he is in the Chair. They may also fail to influence him when he is outside that Chair. I thank you, Madam Chairperson.

MR. NDEGE JOHN (Luuka County): Thank you, Madam Chairman. I have heard what the Chairman is saying. But I look further, these secretaries appointed by the Chairman and then the council approves, and they are the same people who are going to chair these standing committees. I have seen the district at work. If the tender board of the district will be under the Treasurer who is appointed by the Chairman, who is going to have some councilors below him. The tendency is that whatever the Chairman and the secretaries wish, the other people who have got a weaker position shall be always subjected to the wishes of the executive. So, I think that the point raised by Hon. Karuhanga, on behalf of Hon. Besigye is very valid. The moment you allow councilors to be members of government. What has happens is that somebody can be a Treasurer, can be a Chairman of a committee which is a finance committee and, you know, it is a real *katogo.* What I mean to say is that there is a lot of confusion, and the other councilors are just spectators other than participants in the whole saga. So, I wish to agree with that Motion, but we should not constitutionalise the head of the standing committees as it will put districts at ransom of the executive. I think the councilors should able to chose heads or Chairmen of standing committees as they feel or deem fit. That will give a chance to other people who are not secretaries to hold position and also maybe to bring in line actions by the executive which may otherwise be out of line with the wishes of the people. I think that the committee should accept this Amendment. Thank you.

MR. OBUA OTUA: Thank you, Madam Chairperson. I am seeking clarification regarding these secretaries. My understanding is that the executive committee in a district is similar to a kind of a cabinet at a national level. And that the secretaries are sort of equivalent to ministers at the national level, because they are heading things that might be equated to portfolios. Say, if you have the secretary for finance, he will probably be equivalent to the minister of finance at the national level. I just wanted to know whether that is what the situation is before I clarify my own mind. Thank you, Madam Chairperson.

MRS. RWABYOMERE JOAN (Presidential Nominee): Thank you, Madam Chairman. I am totally convinced by the argument advanced by Hon. Karuhanga, because this in effect enhances the aspect of checks and balances of power. Now, if Hon. Karuhanga is agreeable, I have made a formulation here and would, therefore, move a Motion to read as follows: *"There shall be standing committees to carry out such functions as may be assigned by the council."* Thereby doing away with the word 'secretaries.' Thank you, Madam Chairman.

MR. MULENGA: Madam Chairman, I am on the same side as Hon. Rwabyomere, but I am unable to agree with her formulation. We are considering

an article dealing with the executive committee. It would be more appropriate the way Hon. Karuhanga suggested to say the secretaries shall carry out such functions as shall be assigned by the council. Standing committees can come later, the essence is here is to stipulate as to what these secretaries are to do. After describing the composition of the executive committee then we moved to the secretaries, to say they shall carry out functions which shall be given. And Madam Chairman, while I have the Floor may I mention in support of the proposal that secretaries do not head these standing committees. The point is that it is not appropriate that committees of councils are headed by these secretaries who are going to the executives. Hon. Byaruhanga has mentioned that the government is the council, but really I do not understand what they mean by this. The council will continue to act only in meetings, and they will be meeting at intervals, but there will be a government in place, the executive, arm of that government in full time. That is how I understand it. Secondly, it was the Chairman of committee 4 who said that we cannot afford to extend separation of powers to the district also. This is not a correct approach. Separation of powers is not just something for the national level. It is an idea that is sort of good for democratic governance. If we intend, as I think we do, to promote democratic governance even at district level, we should not discard the idea merely because we have one to a district level. So, I think Hon. Ndege, although he went on for too long, made the point very, very clearly when he gave illustration of a Treasurer being Chairman of Finance Committee. How, can that Finance Committee probe or inquire into his department when he is in the Chair? So, Madam Chairman, I strongly propose that we amend the clause.

MR. BAGEYA PATRICK (Kigulu County North): Thank you very much, Madam Chairman. Madam Chairman, I would like to concur with Hon. Karuhanga on Clause 3 that heading committees by the secretaries, first of all is wrong. But then the secretaries can carry out other functions as directed by the council. When a council is in session what normally happens, there are various committees which are suggested by the council at various times. The councilors are not rubber stamps, they are supposed to participate in the council in the formulation of certain issues within the district. Therefore, they are supposed to have shared responsibility with the executive. There is no way you could get somebody who is on the executive chairing some of these committees, because they will have a bias automatically. Therefore, as far as the clause as amended by Hon. Karuhanga I would like to strongly support it. I do appreciate Hon. Rwabyomere's stand point, but that would come at a later stage. Involving the secretaries in day-today running and checking of the district issues will render the other councilors unable to operate because they have to wait. But ordinarily these committees which are selected by the district itself is always chaired by one of the councilors and not any of the secretaries. So that, at least, they do a clear job which is presented to the secretaries concerned. The secretaries can be ex-officials on those committees but they should not be chairing those committees. So, I would support Karuhanga's Amendment and oppose, of course, the Amendment by the committee. Thank you.

MR. KARUHANGA: Thank you, Madam Chairman. I want to thank all the Hon. Delegates who have put in an input in this Amendment. I did not expect it to excite the debate to that level. First, I think, Hon. Rwabyomere really supports my position all the way, except that her formulation was slightly different. I think Hon. Mulenga helped to bring us into a united front. Secondly, I really would like this Amendment not to be known as Karuhanga Amendment because I told you that it was brought to me by Dr. Besigye. So, I am just moving it on his behalf. So, Madam Chairperson, the Besigye Amendment would read as follows: *"The secretaries shall carry out such functions as shall be assigned by the council."*

THE DEPUTY CHAIRMAN: Okay, we have that Motion brought by quite a number of people, initiated by Hon. Kiiza Besigye, introduced by Hon. Karuhanga, put in the proper language by Hon. Mulenga.

MR. KATENTA APUULI: Madam Chairperson, before I accept the formulation and -*(Interruption)*

MR. KARUHANGA: Madam Chairman, I wanted to give reason so that he could -

MR. KATENTA APUULI: I am not looking for reasons.

THE DEPUTY CHAIRMAN: Just hang on. You see, he is the Chairman of the committee. Let him

bring his theory. Now, you as a substantive person who is airing the problem will put into consideration the Chairman's proposal.

MR. KATENTA APUULI: I thank you, Madam Chairperson. What the Hon. Delegates have not realised is that they have changed the function of Clause 3. The function of Clause 3 was not to carry out the function of the council but to chair the standing committees. Now, if you assign, as they have, that the secretaries shall carry out such functions as shall be assigned by the council, that leaves the Chairman out. Are these people not under the supervision and direction of the Chairman? I would like to attract the attention of the plenary to that problem. When you take them you change the function from chairing committees because the purpose of Clause 3 was not to carry out the function but it was to chair committees. Now, if you change the functions to something else you must consider that you need to bring these people under the direction of the Chairman. I thank you, Madam Chairperson.

MR. MALIRO: Thank you, Madam Chairperson. I would like to clarify a bit on what the committee had in mind. As things stand now, the secretaries we have today, the nine, do not have any function whatsoever. The standing committees are headed by other people who are not necessarily the secretaries whom we have. Now, these secretaries whom we have, say secretary for information, only can liaise with any other department but does not head it and does not have any substance. Now, these other Chairmen who are appointed or elected to head the standing committees never have any chance to come to attend the executive committee meetings. They simply report when there is a council in session. That is why we thought that since these secretaries are going to be heading something which resembles a department, say secretary for health will be heading the health department. Then this person would be the right person to come and sit on the executive committee and report what was deliberated in that committee which he is heading. Then the secretary for education would also, having chaired the committee on education, come back maybe this time as a minister and report to the executive committee what transpired in that committee. Therefore, at the end of the day the executive committee would be having views from all the departments or from all committees. Which is not the case if we have got other people chairing these committees and who do not attend to the executive committees, only to wait to report to the council. So, I thought it was better in this formulation if we retain it.

DR. WANDIRA KAZIBWE SPECIOZA (Kigulu County South): Thank you, Madam Chairperson. Madam I have a problem in conceptualising what this committee is trying to do. Especially, in view of the fact that we have said our *federo* will be at the district level. If we are to have the district take charge of its affairs, I would have been more comfortable in view of the fact that we are having a big budget. In many instances there will even be many departments at the district and will even have budgets larger than budgets managed by a minister and a Permanent Secretary. I would have felt more comfortable to have a council act as the local Parliament of a district with designated standing committees and the secretaries will be the minister in charge of different departments. Supervising the technical people in the ministry and I would have wished to see these secretaries form a cabinet in a form of a district development committee. Not the kind of formulation that we have been having now, because we are now revisiting the whole picture and think how we are going to move. I would like the Chairman of the committee to help me in that, because apparently they were looking at the status quo and how to make it better. When you have revolution you look at how to do things better or even to start new things so that you get better results not only polishing what you have in place. If the Chairman of the committee can help me, Madam Chairman. Thank you.

MR. KATENTA APUULI: Madam Chairperson, I have no problem in extending the issue of separation of powers at the district level. However, my interest would be that we should link secretaries to the boss, who is the Chairman. I think that is important that these people should take direction from the Chairman. They may also take direction from the council, I agree, but they should also take direction from the Chairman. I agree with Hon. Kazibwe that we can have separation of power. The secretaries can act outside the committees, they do not have to chair them for the committees to function. If we decide that we should separate that responsibility let us go ahead and separate it in the manner that Hon. Mulenga has already explained. However, I would like to attract the attention of the House that we must link the secretaries to their boss who is the Chairman. Thank you.

MR. KARUHANGA: Point of information. Madam Chairperson, we can solve the problem my Chairman of committee 4 has by naming 3. Instead of using the word 'secretaries,' *"The executive committee shall carry out such functions as shall be assigned by the council."* That way, we have the secretaries and the Chairman together. So, at least, we have solved the problem of separation. Madam Chairperson, one of the reasons why we are having a problem and why we think we should move this and sort it out, is the examples and the experiences we have gone through in the district now since decentralisation started. The amount of the war going on, the money has come. "We are sitting down here now to have it. I want a tender for this, I want a tender for that, I am a councillor, I did not come here, I supported you. Please give me, this is now my business, I want to be one to build that Ggombolola Headquarters." There is so much corruption which we have sent over to the district and people there are very crude about it. They are not sophisticated about it like we have here. There corruption is sophisticated, it is very crude. So, if we do not separate it we have problems.

MR. BIDANDI SSALI: Madam Chairperson, we should be very, very careful so that we really know what we want to be on the ground. I will give you an example. In Kampala City Council, which according to the present Statute is equivalent to a district, there is an executive committee and there are standing committees. These standing committees are headed or chaired by different people, although some members of the executive were elected in their own right as Chairmen of some of the committee. Generally the principle has been that the Chairman of the committee has nothing to do with being a member of the executive. What has happened in practice is that the executive committee has more or less become redundant, except that the Chairman uses it to discuss some policy matters and then introduce those matters to the council for endorsement or whatever. Now, between that consultation of the Chairman with his executive, there is nothing that these members of the executive are legally doing. Except for example, a Chairman of Housing who happens to be a member of the executive. Now, let us not constitutionalise a redundant body when we do not know exactly what it is going to do. Here, Madam Chairperson, when you take Hon. Mulenga's argument, their Amendment would make some reasonable logic if it was that the secretaries shall carry out such functions as shall be assigned by the Chairman. Now, at least, you have related the Chairman to the secretaries, especially, so since you said that such a number of secretaries as the council may decide, being persons nominated by the Chairman. But let us be very clear, because I do not remember whether we have stated somewhere the functions of the executive per se. I think we are just assuming that the executive is the cabinet. Now, when it comes to be translated and we have these secretaries, then we have Chairmen of standing committees at the district level, then there will be confusion. What are the duties of a group of secretaries? Would the secretaries correspond to the committees? If we have five committees, and we have of course, their respective five Chairmen. Should we therefore, have also five secretaries for those sectors of these committees? What if they decided that we reduce the committees from four to five. Does that also mean that the executive or the number of secretaries is accordingly reduced? In fact, Madam, I would suggest, that this very issue be taken back to the committee or to the Technical Committee so that it is really clear. The Chairman says it was, but in light of now these issues which are being pointed out, I am a bit jittery about constitutionalising something which is not very definite. Thank you, Madam Chairman.

THE DEPUTY CHAIRMAN: Hon. Delegates, before we proceed, I have two papers here, I see revision of our proposed Amendment, that is Hon. Kiiza Besigye, Muyiisa John, Kibirango Gyagenda, having made further consultations we now wish to block the proposed Amendment seeking to introduce a new Clause 3. We maintain the second part, that is, delete Clause 3 of Article 210 or 211 of the report. They are revisiting what Karuhanga proposed, so, I really do not know. Let us hear from Hon. Kibirango.

MAJ. KIBIRANGO GYAGENDA (NRA Delegate): Madam Chairperson, I would imagine that the Amendment I was associated with is apparently covered in Article 212. It was with regard to the relationship between the Chairman and the Speaker. On reading further *(Interruption)*

THE DEPUTY CHAIRMAN: So, you are no longer interested in it?

MAJ. KIBIRANGO: We are no longer interested in it.

THE DEPUTY CHAIRMAN: Okay, that is cleared. Now, I have another one from Hon. Ndege. I do not know whether Hon. Bidandi Ssali, you have been doing it by remote control that you are getting somebody seconding you. This is what Hon. Ndege's Motion reads: *"The secretaries shall carry out such functions as shall be assigned by the Chairman,"* which I think was similar to what Hon. Bidandi Ssali was saying. That is the proposal. Now, Hon. Bidandi Ssali, what is the difference between yours and this one?

MR. BIDANDI SSALI: Madam Chairman, the difference is that I am not very, very clear whether that is the best to be constitutionalised. I was making an improvement on what Hon. Elly Karuhanga had brought, which he had, I think, accepted. Maybe, I will bring the issue in reconsideration, but inspite of that I still feel that we need to be more clear. Even after that what is the relationship between these secretaries and the Chairmen of the committees? You know, Madam Chairperson, we should be clear, I think, in our minds that we are moving from a system we know to a system we hope will work well. It is not 90 degrees from this end to the other end. It is likely that according to the decisions we have taken, it is more or less a high breed other than being a pure Presidential system as we know it, for example, in America. So, we have got to be very, very careful where there is this doubt which translates into a high breed. Whether what we are constitutionalising as a high breed is, actually, translatable on the ground. That is why I wanted to have a second thought about it, either in the Technical Committee or whatever the case may be.

PROF. KANYEIHAMBA: Madam Chairperson, the more we debate this clause the more confused it becomes. I wanted to second the proposal by Hon. Bidandi Ssali that this matter be remitted to the committee. Maybe, some of us who have some ideas as to how the structures should be done should be invited also to discuss with the committee so that a better provision comes out. Because it is organically wrong. The concept as to whether we are having separation of the executive committee from the council, or whether members of the council are, actually, the members to be secretaries is still a confused issue at the moment. All the Amendments which have been proposed for improvement are, actually, compounding the issue. So, I believe, Madam Chairperson, that this is a matter which we should remit back to the committee for refinement and for crystallization of these principles before we can admit it as part of the Constitution. So, I wanted to support Hon. Bidandi Ssali's Motion that we remit it to the committee.

THE DEPUTY CHAIRMAN: Hon. Delegates, I think really it does not help us to go on talking when we cannot produce individually what would be the best formulation. I think this is not the first time. Let us take it back, but I propose that we discuss it before we end this chapter so that we see how we fit it in.

MR. NDEGE: Madam Chairman, I did not get a chance to talk on my Motion -

THE DEPUTY CHAIRMAN: You see, Hon. Ndege, your Motion is similar to Hon. Bidandi Ssali's. Even when you talk you may not convince, but we are saying, in order to save time, it is not the first time we have done it. We know you have your Motion, go together with Hon. Kanyeihamba, Hon. Bidandi Ssali and interested parties. You come to an agreement, put it on paper and then bring it here and then introduce it. I do not see any contradiction, whether you say it now or you say it tomorrow, because we said we shall deal with it before. At least, let us go and sit together and see what comes out. I think we should leave it at that. Hon. Magezi, join the other group of those people who want to make it right. Hon. Sabiiti you can do the same. So, we stand over this one until tomorrow. This is only Monday, we still have a full week before us. Hon. Ndege, Hon. Sabiiti join the others and come out with something which is really a hundred per cent of what we want.

MR. KATENTA APUULI: Madam Chairperson, I am being asked when we shall meet. We can begin to meet before you come in every morning, Madam, until we resolve this matter.

Clause 4: *"There shall be a Vice Chairman of the executive committee who shall be a person nominated by the district Chairman from among the secretaries and approved by the majority of all members of the committee."* Madam Chairperson, it must have been members of the *council* not *committee*. I beg to move.

MR. NASASIRA: Thank you very much, Madam Chairman. In view of the ruling you have just made

on Clause 3, I think it will be procedurally difficult for us to try to pronounce ourselves on Clause 4 and even 5. I wanted to propose that we leave out the remaining clauses of Article 211 so as the Technical Committee can consider it totally and bring us the package.

THE DEPUTY CHAIRMAN: Hon. Nasasira, the benefit of debating is, even if you are differing something you would know the terms of reference. For these ones we have not yet justified when, we should not talk about them. Let us leave the Chairman, talk about them, then we shall see how to link it up with what we have already done. Otherwise, we shall push it to the committee, they will come back and then will not give us what we want. So, let us debate it a little bit, see where we go and then we come to a conclusion.I hope Hon. Nasasira you agree with that one.

MR. NASASIRA: There will be a problem, Madam Chairperson, as we go on.

THE DEPUTY CHAIRMAN: No, what I am saying, let us see that problem, which we have not yet seen.

MR. KATENTA APUULI: I wanted to add on to the matter you have just ruled on, Madam, and inform Hon. Nasasira that the issue in Clause 3 is the principle of separation of powers. Now, Clause 4 and Clause 5 are not really directly related to that principle of separation of powers.

MR. BASALIZA: Thank you very much, Madam. I would like to make the following Amendment to Clause 4, it reads: *"There shall be a Vice Chairman of the Executive Committee who shall be a person nominated by the district Chairman, from among the members of the council and approved by two thirds majority of all the members of the council."* Madam, I beg to move.

MISS. NABAFU JENNIFER (Women-Mbale): Thank you, Madam Chairperson. We have just stayed a clause which is concerning the position of secretaries and we have sent it back to the committee. Hon. Nasasira brought it to our attention that if we proceed to discuss these other clauses that follow in that same particular article we may get a problem because they are seeming to be part of confusion. Because this particular clause he is mentioning that the Vice Chairman is going to be chosen or nominated from among the secretaries, who are already giving us a problem. But the way Hon. Basaliza has brought it up and said should be from among the councilors, I feel more comfortable. Because the secretaries will have their own executive position and probably like most Members on the Floor have spoken, they already envisage a particular role to be played by the secretaries. Therefore, I do not see again the Vice-Chairman, being appointed from among the same group of people, for whom we are already sending back a job to the committee to find executive roles for them. We would like the Vice Chairman, therefore, to be picked from the remaining number of councilors. So that he play his role with separation of powers from that group that has really given us a problem. If they are to be approved by the majority of all members of the council so much the better. Then we know that this person is popular among the councilors but does not necessarily clash with secretaries in their roles, that is why I support Hon. Basaliza's proposal. Thank you.

MR. KADAMA: Madam Chairperson, I would like to oppose that Motion. We are creating a situation where the Vice Chairman is not necessarily accountable to the Chairman as such. Under those conditions the Vice Chairman might even ignore the Chairman, with the full knowledge that he has full support of the councilors. So, I think we better create a better Motion where the Vice Chairman is accountable to the Chairman more or like the Vice President is accountable to the President.

MR. CHEBET MAIKUT (Kween County): Madam Chairperson, first of all I happen to have the benefit of being a member of the district council in my district. Therefore, while I agree the spirit with which this Amendment was moved, I regret to say that I oppose the Motion moved by Hon. Basaliza. Now, first of all, Article 210 Clause 2(c) which we have just passed provides that such number of secretaries, as the council may decide, being persons nominated by the Chairman, from among Members of the Council and approved by the majority. So, in otherwords, we have already taken care of the secretaries. What that provision is saying is that, in order to be a secretary, one must be a Member of the District Council. Therefore, I do not see the necessity of repeating ourselves in this particular amendment, when we say that, the Vice Chairman, should be a person nominated by the Chairman from among Members of the District

Council. In my view, we have already said that, for one to be a secretary, he or she must be a Member of the District Council. For that simple reason, Madam Chairperson, I strongly oppose the Motion moved by Hon. Basaliza, on those grounds. Thank you, very much.

THE DEPUTY CHAIRMAN: And do you support maintaining 'O'. What do you say about the original 4?

MR. CHEBET MAIKUT: Okay, the original 4, I am comfortable with it, as it is in the draft. As in the report given by Committee four. The committee's report as it is here.

MR. SAKWA DARLINGTON (Bungokho South): Thank you, Madam Chairperson. I think we are beginning to confuse the roles of different officers of the district. The council although, we have solved the issue of the secretaries. How did we think that secretaries are going to act as heads of the various departments or ministries as I for one will quote them? But we are now looking at the office of Vice Chairman, who will act as Chairman, in the absence of the Chairman. And we are now saying that, this person is first of all, nominated by the Chairman, but nomination is something to approval of the whole council. So, I do not see any fears raised out of Hon. Basaliza's Motion, especially when Hon. Kadama says, that the person say elected might act contrary to the Chairman. He knows he has the full support of the council in the first place. Madam Chairman there is no way you would become the Vice Chairman. If the Chairman, does not nominate you. So, in the first place, it is the choice of the Chairman and the idea of approval is just to give him credibility so that, when he works with the council, he does not find a lot of resistance in his functions. I do not think the approval of the council alleviates him to be more powerful than the Chairman. The Chairman is already elected by the entire district and he is now nominating his deputy. He is seeking approval in order to have smooth operations when he is acting as Chairman. So, I beg to support Hon. Basaliza's Motion.

MR. KATENTA APUULI: Madam Chairperson, I have consulted, I happen to sit very close to some of my Members, and we have no quarrel with Hon. Basaliza's amendment.

MR. BYAKIKA: It would appear there is something we have overlooked here in Clause 2. In Clause 2 we have already said, and the District Committee shall consist of the District Chairman, and the secretary. No, we have not put in the Vice.

THE DEPUTY CHAIRMAN: We did put it in. Unless if you were out of the Assembly.

MR. BYAKIKA: Did we put in the Vice?

THE DEPUTY CHAIRMAN: We put in, honourable. Hon. Bidandi Ssali, what is the problem?

MR. BIDANDI SSALI: Madam Chairperson, I have consulted a bit with Hon. Basaliza. Because his amendment still talks of the Vice Chairman of the Executive Committee. Now, in 208 it says 'There shall be a District Chairman.' What we are trying to do is to have a deputy to him. So, I thought instead of saying, the Vice Chairman of the Executive Committee it will be: *"There shall be a vice chairman of the district nominated by the Chairman from among the Members of the Council and approved by the District Council."*

MR. BASALIZA: Thank you very much, Madam Chairperson. Madam Chairperson, we have been in the case of it for the Vice Chairman of the district. I consulted with the Hon. Bidandi Ssali recently and I have come to agree with him that we could say, District Vice Chairman. So think of this amendment.

THE DEPUTY CHAIRMAN: So, may I be corrected. Does it read like this? *"The Vice Chairman of the district, who shall be a person nominated by the District Chairman, from among the secretaries, from among the Council Members approved by majority of all members of this council.'*

DR. MAGEZI: Thank you, very much, Madam Chairperson. Madam Chairperson, I think we as delegates here, must understand fully the philosophy of decentralization. Its implementation and management. Because people are going to be very bitter, and the way I have listened to the debate from the Floor this afternoon, I am convinced we do not seem to fully apprehend or we have not been finalised from Professor Nsibambi's Decentralization. Because we are talking about separation of powers. We are talking about going into the council

and getting an executive committee, whose functions if they are not going to be the people who share subjects in a Odoki Commission, we fail to agree on. We are now going back to the growing board. And it is impossible for us to pass a rationale decision that matter, when we have not agreed, about the roles of the secretaries. Because otherwise, as the Hon. Bidandi Ssali has said, we shall only bring greatly redundant structures in the constitution. I therefore, plead that, let this whole matter go back, we do not pronounce ourselves on this article. Because to some of us we believe that, the way we understand decentralization, the whole executive, the whole secretaries will be full time employees of the council. We cannot move this when we do not understand the functions. And we are saying, the council will research the functions.

So, I conclude by requesting the Committee 4, to try and organise for us a seminar on the implementation and management of decentralization. It can be a debate, but away from the plenary. So that when we come back here, those who care will have totally and fully understood how this whole thing is going to work. Otherwise, we risk, making a good job be rejected by the citizens of this country that we have given them a system that cannot work. I beg to move.

MR. BASALIZA: Point of information. Thank you very much, Madam Chairperson. I would like to inform the Hon. Delegates that, this is an independent item and the functions of the job of the Vice Chairman have been stipulated clearly here in Clause 5. So, Clause 3 does not at all affect Clause 4 and Clause 5. So, Madam Chairperson, I think we better look at the Vice Chairman in his or her own right. Because we have already introduced this paragraph in Clause 2 and we had made it paragraph (E). So, Madam Chairperson, I would request this House not to stand over this Clause. Because it does not in any way affect Clause 3. Thank you very much, Madam Chairperson.

MR. KWERONDA RUHEMBA: Thank you very much, Madam Chairperson.

THE DEPUTY CHAIRMAN: It is Mr. Kirenga.

MR. KIRENGA: Point of clarification. Madam Chairperson, it is not clear to me, and I would like to get this clarification from Hon. Basaliza whether the words are still maintained in his amendments. The words, I mean are like this, there shall be a vice chairman. Is that in view of what we passed in 2 (b)? I would like to get a clarification about that.

MR. BASALIZA: Thank you very much, Madam Chairperson. I would like to inform Hon. Kirenga that, this is quite independent. We are saying, there shall be a Vice Chairman of the District, so as to make the whole thing clear. So, this phrase would be seen necessary, Madam Chairperson.

THE DEPUTY CHAIRMAN: You asked for a clarification, I thought you had received it?

MR. KIRENGA: No, I have not received it. Because if we have already provided in 2, that there shall be a district chairman, and (b) a Vice Chairman, then there is no need of repeating it Clause 4, that there shall be a Chairman. Here what we should do is to say is that, to provide the means of appointing that Vice Chairman. Because we have already provided for his existence before.

MR. NDEGE: Point of clarification. Madam Chairperson, I would like them to clarify to me, whether this Vice Chairman can hold another position. Because our Vice Chairman is also Minister for Gender. So, I do not know whether this Vice Chairman, can also be assigned as secretary for Gender also in the District or something like that?

THE DEPUTY CHAIRMAN: It seems Hon. Kweronda has an answer.

MR. NDEGE: If there is no answer then I would urge Dr. Magezi and my Colleague Mr. Nasasira to send the whole thing back to the Technical Committee for defining. Because I think the whole thing is mixed up. We might find that, the Vice Chairman can also hold another position, like the Vice Chairman of this country holding -*(interruption)*

MR. BIDANDI SSALI: Point of information. Mr. Chairman, first of all, the next Clause 5 take the functions of the Vice Chairman, which is quite independent of what the Hon. Member is talking about. I do not agree with Hon. Kirenga. Because Clause 2, is a submission and executive committee. It is not yet establishing a chairman. It was Clause 208 which established the office of the Chairman. Therefore, we are following at 208 the submissions of the Chairman, with this one, the submissions of the Vice Chairman.

THE DEPUTY CHAIRMAN: Hon. Delegates, really I do not see why we are referring to this. The decision we want to take is very clear. We know that, there will be secretaries, whether we want it or not. We know there will be a Vice Chairman. The section (e), whether the Vice Chairman, should be the person nominated from the secretaries as proposed or from the council. So, that is the problem there, we really have to make that decision here.

MR. KAGIMU KIWANUKA (Bukomansimbi County): Thank you, very much, Madam Chairperson. I oppose the Motion. Because, Madam Chairperson, if you are appointing someone just to be a Vice Chairman, he will be redundant. Even our Vice president was made Minister of Gender, and the former Vice President was Minister of Internal Affairs. Because if you leave him as Vice President, he will just go, open a seminar here, to close another, to go for *Mchaka Mchaka* opening. So, even in America, you see, we are trying to solve this redundancy issue. A person can hold many offices why not? You see people here, he is a minister, he is NRC, he is a CA, he is a Chairman of everything. He will heap everything to someone, but efficiency.

THE DEPUTY CHAIRMAN: Hon. Kagimu, let me get you right. What you are talking about is this person how he is going to be put in place. What you are debating, you can bring another Motion than the Vice Chairman to be able to hold any other office other than being Vice Chairman. That is what we are debating.

MR. KAGIMU: No, I want to retain the original Clause 4. Today, they say, Vice Chairman or Vice Chairperson, to be appointed from Secretaries, so that this work of being a deputy is just additional. It is not something which is going to always to be their duty to deputize. What is there to deputize? First of all, the money is always there, and what is so much difficult if the Vice President herself can be a minister of Gender. You see, in America for example, you find that even the Vice president has much to do. He is just moving all over the world, you know he is moving up and down. Because, usually, he is not given much work. So, I find that, the secretary, he can be for example secretary for finance. I was discussing it with someone, and he said No! How can you pick a man for example secretary for defence to make him a Vice Chairman. I said no, you do not need to get the one who is for defence, you will choose another secretary. For example you find many secretaries who are redundant who do not have much work. Like secretary for may be for Mass Mobilisation. There is nothing really much to do with the Vice. So, Madam I would really appeal to the Member to consider that. There is a certain Clause I was reading which is infront, whereby the Parliament will see, how much these people are going to get, whether to make laws, how much these were going to be paid. So, it will not be in order to pay a redundant person. And the allowances these people would claim allowances similar to those of a Chairman. Say that, because I am the Vice, I need a house, then they give him a house because of being just a Vice Chairman. So, Madam, I strongly appeal to the member to reconsider and appeal to Members, really to leave Clause 4 as it is. So that these secretaries, they just give as an additional. And, Madam another issue I want to raise, I do not know whether, I am late, but since we are still considering it. I would prefer that, the Vice Chairman of the District really is the same man as the Vice Chairperson of the Executive Committee. The Technical Committee may be, can help us to rearrange that. That the Vice Chairman or Vice Chairperson of the District is the Vice Chairperson of the Committee. So, that we avoid a clash. Because in the executive committee then to another person and to another person. So, with that, Madam Chairperson, I strongly oppose and I appeal to Hon. Delegates to retain Clause 4 as it is.

THE DEPUTY CHAIRMAN: Let us hear from the mover, his hands are up.

MR. BASALIZA: Thank you, very much, Madam Chairperson. I would like to thank Hon. Kagimu for his contribution. First of all, I am a Member of RC 5, in Kabarole District. The Vice chairman is always in his office working and in view of decentralization the vice chairman, has a lot of work to do. We have always said that, to deputize for the chairman. There is a lot of work for him to be done, and shall perform such other functions may be assigned to him or her by the chairman. So, Madam Chairperson with due respect, I think the Vice Chairman, will not be redundant at all. They have too much work. And the question of money, Madam Chairperson, what we are here for is we are after good administration, which will bring a lot of money to the district. But if there is no good administration which is properly spelt out, then even the money you are talking about will be lost. Furthermore, Madam Chairperson, we know very

well that, in administration, it is not a matter of enumeration only, but claims and allowances more than the wages or salaries. So, Madam Chairperson, even if you do not have the vice chairman, what will happen is that, these allowances and claims of secretaries or vice chairman, who is nominated by the chairman and approved by the executive, may increase more money than what he is going to get, when he is approved by the Council. Thank you very much, Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon. Delegates, from my experience, I do not have any executive work at all. But I feel I am not redundant at all. If at all there is a lot of work, and I have no, not even one small item, but I think really there is a lot of work. Otherwise, you find the chairman collapsing. Anyway, the chairman of the committee.

AN HON. MEMBER: Madam Chairperson, I thank you for giving me the opportunity, and I will use this opportunity to be able to answer Hon. Ndege. Hon. Ndege although he is not paying attention right now, asked a question. He asked a question as to whether the Vice Chairman should hold another portfolio. The recommendation of the committee is that, the vice chairman should hold another portfolio as a secretary. Purely not because he does not have enough work, we wanted to save money. We wanted to save money by combining the responsibility of deputizing and that of the Secretary. That was the purpose of the committee. I thank you, Madam Chairperson.

MR. MULENGA: Madam Chairman, I will just be brief on response to what the chairman Committee 4 has said. The framing of this clause, is such that, The Chairman would first go to the council, with a team of nominated secretaries, and they get approved by council. Then he would have to come back to select from among those, find one and submit them to council for appointment of the Vice Chairman. In my view that is cumbersome. What Hon. Ndege has proposed or rather has asked, was already explained by the Chairman of Committee 4. Their intention was to make sure that, there is no redundant Vice Chairman, he always has another portfolio. I think this can be put in a way without saying he is a secretary that he can be assigned some of the duties. It can be put in the functions of vice chairman, that can be stated clearly in the next clause. But I would support the amendment that, the vice chairman, is to be nominated from Members of the council.

THE DEPUTY CHAIRMAN: I think Hon. Delegates, we have discussed the enough of it. I put the question. Those in favour of Hon. Basaliza's Motion as amended?

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, Clause 4, as amended do stand part of this constitution.

(Clause 4, as amended, agreed to)

MR. KATENTA APUULI: Clause 5: *"The Vice Chairman shall deputize for the Chairman, and shall perform such other functions as may be assigned to him or her by the Chairman."* Madam Chairperson, I beg to move.

THE DEPUTY CHAIRMAN: I now put the question.

(Question put and agreed to)

MR. KATENTA APUULI: Madam Chairperson, I wish to request the permission of the Plenary that, we move the article on page 10 which we passed already to this position as Clause 6. To read: *"If the district chairman dies, resigns or is removed from office, the vice chairman shall assume the office of chairman until the election of a new district chairman except that the election shall be held within six months."* Madam Chairperson, I beg to move.

MR. OBUA OTOA: Thank you, Madam Chairperson. Madam Chairperson, it is only the formulation of the last bit of that Clause which is disturbing me. You are making an exception of what? If you want to say that, the election should be held within 6 months from the date of the office falling vacant, and let us say so. It seems to me it would be adequate formulation to say, except that 'the elections shall be held within 6 months.' It is not a very big point, but I would like to suggest that, may be we word it this way, 'which election shall be held within 6 months from the date of the office falling vacant.' Otherwise, I do not know what you are making and accepting of, Madam Chairperson? But I think it is important that, we say what we want to prove that we know what we are talking about.

THE DEPUTY CHAIRMAN: I see Hon. Katenta Apuuli nodding his head.

MR. KATENTA APUULI: I agree with you Hon. Madam Chairperson.

THE DEPUTY CHAIRMAN: I now put the question.

[Mr Okalebo](Question put and agreed to)

THE DEPUTY CHAIRMAN: So, we have 209 (4)transferred to 211, to become 211(6).

MR. NASASIRA: Point of clarification. I thank you, Madam Chairperson. I want to seek some clarification from the Chairman of the committee. In respect to the responsibilities for functioning, that are supposed to be carried out by the Secretaries from time to time. In otherwords, I am thinking about similar things like reshuffles. Does it mean that, when these secretaries are assigned certain responsibilities to carry out such other functions, which functions I am assuming will be set out by the council, they will be in those positions for the term of the council. I just wanted to seek clarification from the Chairman. Have they considered that the chairman, in exercising his powers or wanting to set out and change his programme which he promised his people, who voted him by adult suffrage, will be able to change the responsibilities of these secretaries from time to time, as he believes it necessary? Thank you, very much Madam Chairperson.

MR. KATENTA APUULI: Yes, I am ready. Our assumption was, Madam Chairperson that, whenever that kind of change takes place, the chairman goes back to get the approval of the council. Although we do not say it here, but that was our assumption. Unless you want us to specifically say so here, we can. But the assumption was that, as you will see that, nothing in this document gets done by the chairman without the approval of council. Everything is subject to approval of council.

MRS.KALEMA: Point of clarification. Thank you, Madam Chairperson. Madam Chairman, I am seeking clarification about a matter which Hon. Magezi has just mentioned. The status of enumeration of the chairman, the vice chairman and the whole council, has always bothered me, as we discussed this government of the districts. Whether the chairman and his council are going to be full time and they are going to be paid a salary. Earlier on, madam chairman, we had suggested and you supported the idea of Hon. Bidandi Ssali that, this matter should be sent back to the committee, and be re-visited.

THE DEPUTY CHAIRMAN: No, that was 203 on the secretaries.

MRS. KALEMA: I wonder whether this is being considered seriously. That is what Hon. Magezi was trying to tell us. Are we considering seriously the issue of enumeration of a salary, for this government in this country. Because there is no way, we can expect district government to be efficient and carry out the work as you wanted without them being paid and without us expecting. We cannot expect them to work from 8.00 a.m. to 5.00 p.m. I would like to be clarified on this matter, Madam Chairman, from the Chairman of the committee. Whether the matter of salaries for these people is being considered, or will it be just normalised?

MR. KAGIMU: The Hon. Member could read page 37, Article 228. I think I wanted to give the chairman of the committee a break.

MRS. KALEMA: Madam Chairman, what the Hon. Member has guided me to see is that, if it is 228, saying the requirement shall prescribe the terms and conditions of service. But, Madam Chairman, I am not satisfied with this. Parliament may just prescribe an allowance, and we cannot now, debate functions of the people, whom we do not expect, may be paid a salary. I think just as when we have been debating say the Parliament, and Members of Parliament, the President, the Ministers, will never be paid a salary, and you know where that salary comes from. Now, they are going to leave it to Parliament. The rest is coming from the consolidated fund. Parliament may prescribe. Parliament may come out with the idea that, they may get an allowance. And yet we have already put a structure in place to run the district. In case it is not attractive *-(interruption)-*

DR. BYARUHANGA: Point of order. Thank you, Madam Chairperson. Is it in order for the Hon. Member, to keep pushing the things which she has been told is in Article 228. Is it in order for that Hon. Member to keep pushing it, when she knows that, we shall get there one day. And that it when she would raise it?

MRS. KALEMA: Madam Chairman, I have seen Article 228, says: *Parliament shall prescribe the*

terms and conditions of services, for members of Local government and members of this Service Commission." Now, 230 says that no person shall hold concurrently on a full term basis political offices." But the structure and functions of the council is going to be full time. It is going to be three hours a day, like Members of Parliament. It will be full time according to what we are trying to work out now. So, that is where I am confused and I would like some clarification.

MR. KARUHANGA: Thank you, Madam Chairperson. I am not going to talk for a long time. Just one point, just to appeal to Members including Hon. Kalema and others, that this matter of constitutionalising Local Government, has even gone deeper than we should have actually gone. Article 228, has left room for Parliament to go and pass a law to give effect to the issues you have brought up in a broad way. Trying to go deeper and provide in the constitution. I think is unconstitutional. We can do it, but it would not be really a constitutional document. So, I just want to appeal to Members that, do not be too anxious and over enthusiastic in going too deep into making laws in a constitutional document like this. When the time and room for the laws come out, and bring proper effect and change from time to time, without disturbing the constitution.

MISS. BYANYIMA WINNIE (Mbarara Municipality): Thank you, Madam Chairperson. Madam Chairperson, I wanted to say, whether Hon. Kalema's point is very valid, we need to provide for enumeration for district councilors. It is only a few months ago, Madam Chairperson, if you permit me to bring this to the attention of the House. When the First Deputy Prime Minister was addressing a full council of Mbarara district. He tried to caution them about corruption. The councilors defended themselves and said, that they were awarding themselves tenders, because they do not get paid salaries. Madam Chairperson, although we do not have to provide for this here, and I take the point of Hon. Karuhanga that, parliament could make the law, to provide for the enumeration. Perhaps we need to put down, somewhere that,the Chairman and his executive will be paid a full salary, that it is not a part time job, it is a full time job. We need to specify it somewhere, as Hon. Rhoda Kalema was saying. I do not mind where it is put, but I think we need to provide for it so that, we do not have Mbarara Councilors and others like them making excuses for their corruption, that they are not paid for the service they do for the community. Thank you.

MR. NDEGE: Thank you. I think as Hon. Karuhanga has already clarified that, Parliament will prescribe the terms and conditions of services. If Parliament does so, and parliament is the one to approve district budget, grants given to districts, these will be taken into account by parliament. So, I do not think they really have to go very,very far into this. Because the function will be there and districts will present their budget which Parliament will approve grants for. The only other point which we have not covered under this is, if the deputy chairman dies during those six months before elections are made. We have not made an extra provision for the speaker. The taxation cycle we left it at only one. They should look at the fact that, also the acting chairman can die. So, who comes in after that? It should be the speaker. When the committee is looking at three, they should come in with some extra provision, as to who succeeds, if the chairman dies, and before the six months elapse, the vice chairman dies. So, what next? Does the district comes and -*(inaudible)*-

MR. SSEBALU: Thank you, very much, Madam Chairperson. I rise on an issue raised by Hon. Rhoda Kalema of enumeration of the executives of the districts. But as Hon. Karuhanga has already, indicated, and amplified by Hon. Winnie Byanyima, in Article 228, it is already given constitutional significance. It has already been referred to that, Parliament shall prescribe the terms and conditions of service for Members of the Local Government Councils. I think that provision is very adequate in that, for us to come here and spell out terms in the constitution, would be very undesirable in that, these terms need to be researched. There are a lot of considerations that need to be put in place to come up with terms and conditions which are very suitable and which will encourage members of the Local Government Councils to perform well. So, it has already been given constitutional significance, and been referred to and then saved for a better forum where discussions will be made.And when those discussions are being made, there will even be un input from the Local Government Councils, because these people have Members of Parliament from their areas. So, there will be that input and the discussion will be adequate to come up with serious well researched and well thought out terms and conditions. So, I feel that, 228 on

page 37 settles the fears of Hon. Rhoda Kalema. It comes out with a better package, than if we stood here and prescribed one, without putting into consideration the various complexities that are involved in an exercise of that nature. So, I think Hon. Kalema should settle in this provision.

THE DEPUTY CHAIRMAN: Hon. Delegates, members are saying that, Hon. Kalema should not worry, 228 takes care of whatever you want to say. So, the second one is on death of the Deputy. Hon. Katenta Apuuli what do you have to say?

MR. KATENTA APUULI: Madam Chairperson, if Hon. Rhoda Kalema wishes to move that will be more specific than Article 228 says, she can move, then we come to that particular point.

MRS. KALEMA: Madam Chairman, as suggested by the chairman of the committee, 4, I heard him suggesting, if I wanted to move, I could move and actually this is not my original amendment. But Hon. Magezi we discussed it with him, and it was him to move and I was supporting. And the amendment would read: *"This chairman and such number of secretaries as the council shall determine, shall work on full time basis for the district."* I beg to move.

AN HON MEMBER: Madam Chairperson, if I could appeal to Hon. Kalema to move that item under 228, when we get there.

THE DEPUTY CHAIRMAN: In fact that is why, we would discuss the terms and conditions of service, whether you are on contract, whether you are permanent. Whether you are on consultancy and so forth. So, I think the Chairman is right. That is the term and conditions of service, whether you are permanent or temporary, or on probation and whatever have you. I think we have really finished the other one.

MR. KASAJJA: Madam Chairperson, I was just saying that, since we have referred Clause 3, I think Hon. Rhoda Kalema's point fits in there. When Select Committee 3 sits again, we look at, I think they can incorporate this. Because it is just a guessing that we confirm that these posts will be full time posts.

THE DEPUTY CHAIRMAN: Yes, Hon. Byakika, you have not read 228, It is saying that, Parliament shall prescribe the terms and conditions of service. What I interpret on that one is, how is it going to operate? It is not temporary terms, is that person temporary, is it on probation, is it consultancy, so that we come there. And she has agreed, so that is the problem. We are agreeing, but it will come at the right place, when talking about terms and conditions of service.

MR. SEBI HAROUN (Koboko County): Thank you, Madam Chairperson. Madam Chairperson, an Hon. Member raised a question of a reshuffle of the secretaries and we left it un-tackled. I am a Member of Committee 4, I would like to clarify this point by saying that, in certain cases, it might be difficult to reshuffle some of these secretaries. Because they have specific roles to perform. For example we have the Secretary for Youth, and somebody must be really a youth. And Secretary for women, she has to be a woman. You have also some other technical departments like Finance. A secretary for finance must be somebody who is knowledgeable in finance. The Secretary for security, this one should be somebody who has some knowledge of security affairs either a policeman or an ex-policeman or an ex-soldier or ex-prisons warder. So, I feel really, the reshuffle can only be handled in certain areas where you do not have specific roles. But again, you find that, these are elected Members, they are elected by the council, having been nominated by the chairman. So really it becomes difficult to have other elections again.

MR. CHEBET MAIKUT: Point of information. Madam Chairperson, I would like to give information to the Hon. Member holding the Floor. That we have already passed a clause somewhere which provides that at least one third of members of any Local Government level, of any Local government structure will constitute women. In otherwords, if we are talking about a district council, then for sure, we shall have at least one third of Members of the District Council being women. And therefore, if a chairman, has got to reshuffle, his or her secretaries or the cabinet as such. For sure there can be no short cut of those people who can qualify to hold the positions of secretaries. Even when you consider the youth, from 18 to 30. For sure no Hon. Delegate can say that, among the Members of the Council, you can miss or you may not have a Member of the council who qualifies to be within that, age bracket. So, really what the Hon. Member holding the Floor is saying is not absolutely correct. We have the

resources, the people are there. So, the chairman in my view, should be allowed if he or she reshuffled a cabinet for the purposes of improving the performance of the District Council. Thank you.

THE DEPUTY CHAIRMAN: Hon. Chebet, just hang on.

MR. KATENTA APUULI: Madam Chairperson, I thank you. I am wondering why, Hon. Delegates are so concerned about this issue of reshuffle. And I do not know whether reshuffle should really be a constitutional matter. Because when we were discussing the executive, I do not remember us talking about reshuffling Members of Cabinet. I thought it was taken as an assumption.

MR. NASASIRA: Point of information. Thank you, Madam Chairperson. I would want to inform the Chairman of Committee 4, that he should refer to Article 115 of Chapter 7 which is completed. Clause 4, where it says: *"A Minister shall have responsibility for such functions of government as the President may from time to time assign him."* That Clause caters for reshuffles. Madam Chairperson, I still maintain that, that does not specifically say, there will be a reshuffle. In the same way here, we are provided that, the Chairman of the District Council, can assign his secretaries duties, from time to time. And I do not see where, really a reshuffle is specifically mentioned in this constitution.

MR. KAGIMU: Point of information. Thank you, Madam Chairperson. I think if the Hon. Delegate could be patient, I think that would be more appropriate when we come to Article 213. So that, whether he moves that we add a Clause there or we delete Article 213 on the same page 19. Because, that is where it comes for the vacation of the office of the Member of the Executive Committee. Because under (a), it is the appointment of that Member, which is revoked by the District Chairman, or that Member like that. I think that will come under that. Article 213, page 19, which continues to page 20.

THE DEPUTY CHAIRMAN: Do we agree that, that will take care of what we want? Okay, so if that is the case, then we have covered 211 (1), 211 (2), 211 (3), 211 (4), with amendment. And 211 (5), and 211 (6). We stood over 211(3), that is 1,2,4,5,and 6. So, we have to wait for 3, before we fully pronounce ourselves on this article.

MR. KATENTA APUULI: Madam Chairperson, since you have sent Clause 3, back to us, we shall try and see how we can address this issue of reshuffles under that Clause.

MR. NASASIRA: Madam Chairperson, I would like to seek the indulgence of Hon. Delegates and your indulgence Madam Chairperson, about the sequence of the next article. As you see, we have been numbering and re-numbering these articles and there was confusion as to the sequence. Item Number 12 on page 19, should come after Item Number 13. So, I request permission to move to 13, and shall come back to 12, after we finish Item Number 13.

THE DEPUTY CHAIRMAN: I think that is acceptable.

MR. NASASIRA: Article 213, Clause 1. *"The Office of a Member of a District Executive Committee shall become vacant if (a) the appointment of that member is revoked by the District Chairman, or that Member (i) is elected to a Speaker of the District Council or (ii) resigns from office or (iii) becomes disqualified to be a Member of the District Council, or (iv) is physically or mentally incapacitated or dies or (c) a new chairman assumes office."* Madam Chairperson, I beg to move.

MR. MAZIMA: Thank you, Madam Chairperson. I am looking at paragraph (b) 4. It is hanging because it is not properly defined. I beg to move that, the paragraph be deleted and the following words be inserted. *'Is incapable of performing the functions of his or her office, by reason of physical or mental incapacity or dies.'* I beg to move. Madam Chairperson, if the paragraph remains as it is, the focus will be on physical or mental incapacity, and will have interpretation problems. But now, the focus will be on inability to perform as a result of physical or mental incapacity.

THE DEPUTY CHAIRMAN: Hon. Delegates, we had something similar to that before, can we not adopt that one. You can go back and see where it is and use the same language. (Interruption) Is it on Hon. Mazima's Motion? On (b) 4.

AN HON. MEMBER: Thank you, Madam Chairperson. Madam Chairperson, I would propose a Motion to delete (b)4. We have already provided in (b)3. To be a Member of the District Council.

This morning we passed some provisions setting out, I think it was Article 209, Clause 1. Now, I have been advised by two Members here that, this was in respect to the Chairman, and I withdraw that one.

MR. OBUA OTOA: Thank you, Madam Chairperson. I am rising in connection with paragraph (c).

THE DEPUTY CHAIRMAN: No, No! I said I want debate on (1))4. Because that one is asking, for an amendment, we pronounce ourselves, and then we proceed. Okay, those in favour of Hon. Mazima's amendment of (b)4 of 213.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: Now, let us finish (b) first, before we go to (c). Any problem on (b)?

MR. KUTESA: Madam Chairperson, I find nothing wrong with what is there, but I find certain things missing. We have subjected other officials to losing their offices, if they abuse such office or if they are guilty of misconduct and behaviour in their offices. I would not want to move a motion to insert those under (d) or (e). I would rather that they were brought under (d); because why should this official -*(Interruption)*

THE DEPUTY CHAIRMAN: Wait, wait, let him finish because he is in the middle of a sentence. We have not even understood what he is talking about.

MR. KUTESA: Yes if a member of the district executive committee abuses his office for example, by being corrupt or he is found behaving in such a way that brings into contempt the office he holds. I do not understand why he should not be removed or lose his office like we have done for the President, for the Chairman of the District, for the Speaker of the District. I think the same should apply to these members of the district executive committee. So rather than come up with a new item or rather a new clause, I would prefer that it is enumerated, these are enumerated under (b) where you have enumerated all these others.

MR. KAGIMU: Point of information. Thank you very, very much Madam Chairperson. I would like to inform the Hon. Member that the secretaries are appointed by the chairman. Now, if the chairman sees that, this man is corrupt, his official, he gets the report, then he fires him as it was the case on page 41 of the report of the executive. The President has the authority if I may use the words of Hon. Fr. Gaitano, when he says that he who has the authority to hire must have the authority to fire. So the district chairman will cater for that and in the case of the President and of the district chairman, it is that he has been appointed or elected by adult universal suffrage. So there is no authority who is going to fire him unless we go back to elections. That is why they provide for what we have said that he must account for the abuse of office or what. But in this case when hired, there is no problem. The district chairman will take care of that.

MR. SAM KUTESA: Madam Chairperson, I am grateful to Hon. Kagimu for his information. But if you go further down on page 20, you will find that the District Council may by resolution supported by not less than half of all members of the Council, pass a vote of censor against a member of the executive committee. Now, the power to remove a member of the executive committee does not lie exclusively with the chairman. The Council has a right if it marshals sufficient numbers, to censor a member of the executive committee. What I am saying is that they should be able to censor that member on given grounds and one of them should be abuse of office or misbehaves and misconduct. So to say that the chairman is the one who has power, indeed he has power but if the council is going to have power to move a motion of censor, we should also give the grounds on which this kind of motion should be moved.

THE DEPUTY CHAIRMAN: Hon. Sam Kutesa, why do we not be specific that we propose something on (b) (3) to define what this qualification would entail? Why should one be disqualified? Because (b) (3) says, becomes disqualified to be a member of the district council. So are you saying that you would want to lay ground for disqualification?

MR. SAM KUTESA: Yes, because abuse of office is not one of the grounds.

THE DEPUTY CHAIRMAN: Then you move a motion and then we move.

MR. KUTESA: Let me first get Hon. Kagimu's information and then I shall formally move.

MR. KAGIMU: Point of information. Thank you very much. Madam Chairperson, Hon. Kutesa mentioned Clause (2) down. But then he did not read up to Clause (7) because a vote of censor will be passed against a member of the executive committee unless the member of executive resigns, take appropriate action with the matter. Then number (4), a notice of censor shall be initiated by petition to the chairman. Of course petition includes everything. Petition 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 member of the executive committee. Five, the chairman shall upon receipt of the petition cause a copy of it to be given to the members of the executive committee in the question. Six, the motion for the resolution of censor shall not be debated until expiry of 14 days after the petition was sent to the chairman. Seven, a member of the executive committee in respect of whom a vote of censor is related under paragraph (e) of this clause is entitled during the debate to be heard in his or her defence. Does that not cater for his fears Madam Chairperson?

MR. SAM KUTESA: Now, I must move because I think Hon. Kagimu's information is not helpful. I am talking about grounds. So that Hon. Kagimu does not move a motion against a member of the executive committee because he is ugly. There must be serious grounds.

THE DEPUTY CHAIRMAN: Okay, let us hear from Hon. Katenta Apuuli to give you more information. Then you can move your motion with an informed mind.

MR. KATENTA APUULI: Madam Chairperson, I do sympathise with the cause of Hon. Kutesa. However, I would like to point out that his move to include abuse of office, misconduct or misbehaviour, physical incapacity is already there. It would limit the grounds under which a member of the executive committee would be removed. So if you put here in the constitution the same items as in Article 210 Clause (1), that would really limit the scope of the ability of the council to censor that person. That would mean that we could only censor that person on those grounds. But earlier on, you remember in our debate this morning, we did talk about allowing the council to look into the performance of an individual and say we are not satisfied with this performance. Let this person be removed. We did restrict it in as far as the chairman is concerned but I think we should really allow greater latitude as to the members of the executive. After all, when you are censored, that is why we did not use the issue of the vote of confidence. We chose censor because it cautions you whereas a vote of confidence means you have to go. We chose censor only to bring you to attention that you are not doing as well as you can possibly do. But when you limit the scope to only these three items, abuse of office and misconduct as well as physical disability, it means a person who is not performing continues not to perform so long as he has not abused any office. So I would like to appeal to you that you do not limit the scope.

MR. KUTESA: As a matter of fact Madam Chairperson, I am expanding the scope because I am not removing these. I am only adding the other two. I do not see why the chairman should think that by adding more grounds for censor then I am limiting the scope of the council. And therefore Madam Chairperson, I beg to move that -*(Interruption)*

MR. KATENTA APUULI: The problem Madam Chairperson would be one of interpretation. The people at the lower level might interpret that you can only censor me along these three lines.

MR. KARUHANGA: Madam Chairperson, I would like to appeal to Hon. Kutesa not to go ahead and move his motion only if I can manage to convince him in addition to what our chairman has tried. First, one of the reasons the committee found that we should not put abuse of office, misconduct or misbehaviour on members of the executive committee of the district was that these people basically are picked from the district council by the chairman. These are his nominees. He picks them, they get approved by the council. Whatever they are doing, they are doing in his name and they are his functionaries in real practical life. If one of them misbehaves or abuses office, the reflection of that goes straight to the chairman. Once members of the council start becoming disgruntled with one of them, he has the power to reshuffle that person first. If he does not, he can drop him from the cabinet, if he does not, then he breaks the peak himself, the chairman goes. It becomes a vote of no confidence in the chairman because he is actually not in charge. Somebody else is running havoc in the district. But now to try and say that the chairman has picked someone whom he has made, a Minister in the

district. There now, it is up to the district to start looking for abuse of office and you know the standard for achieving that is so high to establish abuse of office, the standard is so high. You are making it very difficult even for the chairman to actually reshuffle this man. Because once you establish that office, the man stands up and says, why did he not bring me to the discipline committee to establish abuse of office because that is a very high standard. You have to establish various committees. Misconduct the same. Because all these are subjective and the person who can see this is the chairman. He is the one who has appointed you. Therefore, in the wisdom of members of our committee we said, first, Madam Chairperson, for them to leave, the appointment of that member is revoked by the district chairman. That revocation takes care of the abuse of office of misconduct. That is where we have deposited our trust. We said the chairman is the first one who should revoke that person's appointment. The rest are easy, (b) and (c), those are automatic. So I would like to appeal to Hon. Kutesa at least even if he wants to continue with his line to appreciate the logic that is behind our committee in addition to what our chairman has already explained. Thank you.

MR. SAM KUTESA: Madam Chairperson, Hon. Karuhanga knows as well as I do that there is no vicarious liability in criminal activities. There may be vicarious liability in civil matters. But suppose a member of the district council has misappropriated funds and the council wants to remove him, you do not say that because this man has misappropriated funds, therefore the chairman has. There is no vicarious liability in that kind of situation. But what is most important is the inherent right of the council created by Clause 2 of this article given to the council. To be able to move a motion of censor. I cannot understand any good reason being advanced either by the chairman of the committee or Hon. Karuhanga. Why they would want to exclude abuse of office or why they would want to exclude misconduct. I am widening the scope or the ground upon which a council can move to censor a member of the district executive committee. I just cannot understand all these appeals. What are you scared about? Do you want to protect anyone abusing office? Therefore Madam Chairperson, I am continuing to move that Clause 213 (b) be amended after (b) (1). (b)(2) is guilty of abuse of office, (3), misconduct or misbehaviour and then it continues as the rest are. I beg to move.

THE DEPUTY CHAIRMAN: Is that seconded? Anybody opposing it?

DR. BYARUHANGA: Thank you Madam Chairperson. I would have thought positively of Hon. Kutesa's amendment if it was not coming under 213(1). Because Madam Chairperson, in 213(1), especially under (b), we are considering obvious causes for the removal of the member of the executive. But when you consider Hon. Kutesa's introduced reasons to cause removal of a member of the executive, you will note that these will require expertise to determine. Now Hon. Kutesa said in his explanation that for example, if somebody misappropriates money, the police will deal with him. Probably because he will be in prison because of his absence, he will be dropped from the district executive. Otherwise Madam Chairperson, the committee provided for the members of the executive being actually appointees of the chairman. This chairman who is like a district President chooses his own Cabinet. Under (a) we have given these powers to the chairman that you can always remove these fellows you have appointed. We have gone further in Clauses 2 to 7 to say that if the chairman is a bit blind, the council can advise him on the vote of censor. We think these are enough. Because if I recall, we did not even provide for these grounds for Ministers. I wonder why we are now very interested in providing these grounds for members of the district councils. Thank you madam Chairman.

THE DEPUTY CHAIRMAN: Hon. Sam Kutesa, do you not think really Clause 3 up to 7 would take care of your problem? Because they are saying 'may by resolution.' If they say that the chairman is adamant, then they resolve which I think is a cleaner job than doing things arbitrarily. That is what Hon. Byaruhanga is begging you to consider.

MR. SAM KUTESA: Madam Chairperson, this has nothing to do with the method in which they cause the censor. It has to do with the grounds on which they base the motion of censor. But whether it is by resolution or by petition or by legislation, that is a method. But I am talking about the grounds.

DR. MUGYENYI: Thank you Madam Chairperson. Madam Chairperson as Hon. Byaruhanga has said, Hon. Kutesa's amendment technically cannot fit under this Clause 213, sub-clause 1. This sub-clause is catering for automatic cases where the

office of the executive committee falls vacant. You will recall that somebody can vacate his office either if he dies, if he voluntarily resigns or if his appointment is revoked by the chairman or if a vote of censor is moved against him or her by the council. Now, if that person dies, that situation is catered for. If that person resigns, it is catered for. If the appointment is revoked by the chairman for either the cases Hon. Kutesa outlined or any other reason. That situation is catered for by 213 (1)(a). If the appointment is revoked by or after the initiation of the council, then that one is catered for in 213 Clause 2. Hon. Kutesa's amendment can only come as a ground for moving a vote of censor. It can only come as a ground for 213 (2) but it cannot technically fit into 213 (1) which is catering for obvious automatic cases when office falls vacant.

MR. NASASIRA: Point of clarification. Thank you Madam Chairperson. I want clarification from my Friend Hon. Dr. Mugyenyi whether when somebody is mentally incapacitated, it is automatic or whether it has got to be justified by a doctor or somebody.

DR. MUGYENYI: Madam Chairperson, well, it is not automatic but definitely a mad man is automatic almost. A mad man cannot be chairman of a district. It is almost automatic. So Madam Chairperson, I do not have serious quarrel with Hon. Kutesa's amendment. In essence it does not change the content of what we are trying to achieve. But only if it can come as a ground for either the chairman to revoke the appointment. Or the council at sub-clause 213, subClause 2, for the council to initiate a vote of censor into a member of the executive. That would be understandable.

THE DEPUTY CHAIRMAN: Hon. Kutesa, they are saying that if the first set of proposals, it is the chairman who is in charge and the second set is where the council is in charge. Can we move your amendment to (2), to a second set Hon. Kutesa?

MR. SAM KUTESA: Madam Chairperson, I cannot understand the distinction being made by Hon. Mugyenyi. He is saying certain grounds are automatic and he has failed as a medical doctor to answer Hon. Nasasira's question. Is mental incapacity not a matter to be proved just like theft is except by different set of professionals? One is proved by doctors, another one is proved by the police and lawyers. So there is nothing automatic about mental inability. Just as there is nothing automatic about abuse of office. They all have to be proved. All I am saying is that there are grounds upon which a council should move a resolution. As a matter of fact, I am informed that death is also subject to proof.

THE DEPUTY CHAIRMAN: Okay, let us hear from Hon. Karuhanga who has been in the debate.

MR. KARUHANGA: Madam Chairperson, I would like to strongly oppose Hon. Kutesa's amendment and support our committee. Not so much because I want to be tied to the idea of committee because I am a member of the committee. But because his line was my line in the committee and I was defeated thoroughly. I appreciated the reasons why I was defeated and I would just hope that he too, will finally be persuaded like I was. The point Madam Chairperson and fellow Delegates is the standard we are trying to bring at every district in removing the difficult member of the executive. We want to have an easy way of getting this person who is surrounded by rumours which you cannot prove. We want the chairman to have an easy way in getting rid of this person without having to carry such a heavy burden and acing through such heavy political expense to solve the problem at a young up-coming district which is beginning to hold power for the first time. We want an easy political system, not a complicated political system. You want to create a chairman, who when he has appointed certain nine members of the district committee, given them jobs, sees that one of them surrounded by rumours about misappropriation of funds. Allocating money or jobs to his relatives or spending most of the time in bars drinking and talking all sorts of things. Drinking from one bar to another up to whatever time and not attending to his work, and he does not want to go into this, and he just says I drop you from my cabinet. There is no question you are going to raise. You have been dropped, finished and they have appointed Bwambale, finished. But to say that now you have put there a standard and that standard -*(Interjection)*- one of the two Bwambales. *(Laughter)* That you have put there a standard namely the standard of abuse of office. Then the chairman will say the person goes and he is a drunkard who has been buying a lot of drinks to members of the district council. He says, the man has dismissed me because you know, I am from the other religion and he starts talking and then he organises his religious group in

our districts. It is very easy to get your religious faction. They say now, why have you removed our man? Our man was doing a very good job, our man was this, our man was that. So you bring problems if you start putting the standards of proving abuse of office. Our committee just said you stop being a member if the appointment of that member is revoked by the district chairman. Unless you want to establish the reasons which the chairman should use to remove you after he has appointed you. But I think since we have given him the power to hire and pick you, why do you not give him the chance, the latitude to also get rid of you if he feels that he is tired of you? Secondly, we have all the time provided in (2) that the district also has a chance to get hold of you if the chairman has failed. Now I was looking at it positively, if on the other hand you are part and parcel of the chairman and you are also misusing, then the district also has chance in (2) to also get hold of you. You cannot escape. So I think you will have various ways this office can be vacated but then we move to Clause 2. We say grounds upon which censor can be initiated because if we do not, then the council can also cause problems for the chairman. Every time they will come and say we censor this Minister. So there must be grounds on which censor can be initiated and once censor has been successful, then there should be room for this executive to vacate the office. So my proposal and I want to suggest to Hon. Kutesa that we add Clause (d) to say when a vote of censor is passed then we go to Clause 2 and specify grounds on which censor can be initiated.

MR. OTOA: Point of information. Madam Chairperson, it is becoming difficult to appreciate what Hon. Karuhanga is talking about. He is going round and round in circles which is not characteristic of him *(Laughter)* I do not know. Madam Chairperson, what Hon. Karuhanga is talking about is provided for in (a). The chairman can actually revoke anybody's appointment

Is he suggesting that we should not have gone ahead and provided anything under (b)? Because under (a) it is provided that the appointment of that member can be revoked by the district chairman and he could use any grounds for removing that person. But now if you say that we should make no further provision under (b), then you better say we should cancel the whole thing. But what Hon. Kutesa is talking about merely adds other grounds under which the chairman can remove or other grounds under which the office can fall vacant. I do not understand why he is taking us -*(Interruption)*

MR. KAYONDE: Madam Chairperson, I do not know why Hon. Karuhanga has failed to see the point being made by Hon. Kutesa. I think what Hon. Kutesa is saying is that there must be grounds for a vote of censor to be passed against the executive and these grounds are not provided for in clause 2. Now here, I want to suggest that in the first set of how an executive can leave office, we add (d) to say that when a vote of censor is passed. other words,

MISS KALIKWANI IRENE (Women Delegate - Kamuli): Thank you Madam Chairperson. Madam Chairperson, from an assessor's bench, I notice that both sides have very strong powerful points they are making. Is it in order that this House should proceed to consider those very important points when we are lacking a quorum?

THE DEPUTY CHAIRMAN: Okay let us count and see how many we are.
Hon. Delegates, as the clerk is counting, I want to put a proposal concerning Hon. Kutesa, Hon. Kayonde and Hon. Karuhanga. We agree where to place your problem because I think the problem is placing it. Everybody agrees that you are right but they are saying where it is wrong. Hon. Kayonde is saying if we provide for it in (c) in the at way, then when we come to 2, we can see the ground for censor.

MR. KARUHANGA: Madam Chairperson, I agree with you.

THE DEPUTY CHAIRMAN: So Hon. Kutesa, better go to your Friends and agree so that we do not come back here and open the debate. We have wasted a lot of time on it, for the sake of time. No we are not debating anymore because somebody raised the issue of quorum. But I said as they are counting, I beg the parties to agree so that we come back tomorrow and we do not waste time to open the debate again. They will have agreed, there will be no contention, so we shall just pronounce ourselves on it and we move. Hon. Kutesa, I want to hear your voice. That you agree to have marriage with Hon. Karuhanga.

MR. KUTESA: Madam Chairperson, I have no problem meeting Hon. Karuhanga and Hon. Kayonde.

THE DEPUTY CHAIRMAN: Thank you very much and I say please, make as much as possible an agreement.

MR. KARUHANGA: And I am also game.

THE DEPUTY CHAIRMAN: What do you mean? Do not use the legal language. Sometimes I get lost. Use the simple language I understand. You are with him?

MR. KARUHANGA: Yes, I am agreeable.

THE DEPUTY CHAIRMAN: Okay, so now we are 93. So I propose that we adjourn. Come tomorrow just to vote, to pronounce ourselves on the issue, not anymore clashes between Hon. Karuhanga and others. So we stand adjourned until tomorrow at 9.00 a.m. And Hon. Delegates, it seems we are really going back into lateness. Let us keep time at least.

(The Assembly rose and adjourned until Tuesday 4th April, 1995 at 9.00 a.m.)

THE REPUBLIC OF UGANDA

PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

TUESDAY, 4TH APRIL 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3798]

Tuesday 4th April 1995

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

PRAYERS

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

(The Assembly was called to Order)

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

CHAPTER 13- LOCAL GOVERNMENT

THE DEPUTY CHAIRMAN: Honourable delegates, by the time we left yesterday, we had assigned Honourable Karuhanga and Honourable Sam Kutesa to go and agree and bring us some worked out way of preventing the Clause on ...

MR. SAM KUTESA (Mawogola County): Madam Chairman, we did have a brief meeting and we agreed that we should have under 1 (d) No. 5, which would essentially be the Council and then when we come to the next Section, we shall give out the grounds on which the Council may censure a member of the executive.

THE DEPUTY CHAIRMAN: Any query to that Amendment?

MR. SAM KUTESA: 5 (d) would simply say that 'the office of a member of a District Executive Committee, shall become vacant,' and you have all the rest. At 5, you say, 'if he is censured by the Council.'

THE DEPUTY CHAIRMAN : Hon. delegates, earlier, on there was a proposal, 'if a vote of censure is moved,' now they have just put it in a more compact language. Those in favour say aye to the contrary nay. Ya, because there was nobody responding, so I thought there was no query.

MR. KATENTA APUULI (Conservative Party): Madam Chair, I am sorry if I did not catch your eye in good time. However the Committee did not mean to say that whenever a secretary is censured, he or she must resign. The purpose of censure was to draw the attention of that Secretary that things are not working well with him or her. That is why we avoided using the vote of no confidence, we used the word 'censure.' So that if the matter is grave, then that member should resign, if the matter is slight, only his or her attention is drawn. But then Honourable, Kutesa's formulation means that whenever there is a vote of censure, that person must resign. We did not want to stretch it to that extent. A vote of censure was meant to keep that person or those people on their toes, to make sure that nothing goes wrong. That is why we left it elastic so that if a matter is grave, then that person resigns, if the matter is slight, that person is only warned.

THE DEPUTY CHAIRMAN: Hon. Katenta Apuuli, but when we go Clause 2, 3,4, 5,6, and 7, there is a very elaborate way of transacting that censure in which case, we may not go through. Really with that provision, with 2, 3, 4, 5 and 6, those still contradict what Honourable Kutesa has proposed.

MR. KATENTA APUULI: I do not have strong views on this, but I wanted to explain Honourable Chairman, the purpose of using 'censure' rather than using 'vote of no confidence.' I do not have strong views, we can go along with Honourable Kutesa's proposal.

THE DEPUTY CHAIRMAN: We should not really waste a lot of time on this. Proceed please.

MR. KUTESA: Madam Chairman, first of all, when the Amendment says, he is censured by the Council, it means that the Motion of censures has succeeded.

Secondly, I do not quite understand the committee's feeling. We are not saying that he should move a Motion of no confidence in the whole executive. But if for example, a member of the executive is guilty of abuse of office, and you move a Motion of censure, what kind of toes do you want him to keep on? I think he should resign, I do not see why a Motion of censure in an individual should not result in resignation of that individual. I would like to understand why you think it is a question warning. By the time you go through this elaborate machinery of censuring a member, it cannot be a small matter. In fact, I was reflecting on it, I think we should even limit the grounds on which he can be censured. When you say we want to remain

flexible and you can censure him. It means Motions of censure are going to be used on very flimsy reasons. So, I would rather that we spell out that on these grounds, a Motion of Censure can be moved. If it is moved, and it is successful, and the member is censured, he should resign. I would like to know from the Committee why they feel that a Motion of Censure should be moved against anybody. If it is successful, that person should remain in office. We are not trying to bring down the whole Government, we are talking about one individual who we feel strongly about as having let down that executive.

MR. SEBI HAROUN (Koboko County): Thank you very much Madam Chairperson. Madam Chairperson, one of the reasons that we advanced in using this word, 'censure' was as Honourable Kutesa said. One, to warn a member who might have gone wrong somewhere and secondly, it is also to give a chance for him to defend himself. Before we go on to the vote of no confidence, because that one of no confidence is not negotiable, it is the last thing to do. But for censure, it gives him a chance to defend himself. The people will listen to his point of view and if they are not contented, then they can go on now to move a vote of no confidence in the same. Thank you very much.

MR. AWORI AGGREY (Samia Bugwe North): Thank you Madam Chairman. I would like to, move an Amendment that terminology, vote of censure appears should be substituted with the vote of no confidence. Madam Chairman, *-(Interruption)*

THE DEPUTY CHAIRMAN: Is that seconded? Seconded by Atwoki Ambrose. Okay, you can proceed.

MR. AWORI: Madam Chairperson, obviously from the previous speakers, the vote of censure essentially means, the Yellow Card. Red Card would mean a vote of no confidence in his capacity to perform. So, Madam Chairperson, if it is the question of warning a person who is not performing very well, - *(Interruption)*

PROF. KABWEGYERE TARSIS (Igara West): Point of Order. Thank you Madam Chairman. Is the Honourable Member in order to move a Motion and although it has been seconded, that confuses two concepts, Motion of Censure and Motion of No Confidence? The Motion of No Confidence is in the whole Government or in the whole executive, a Motion of Censure is against an individual. Is he in order to confuse the two?

THE DEPUTY CHAIRMAN: Hon. Aggrey Awori, you are being ruled out of order but could you explain the difference? What you understand the difference between censure and a vote of no confidence, the parties that are involved.

MR. AWORI: Madam Chairman, I would like to call upon the Honourable Delegate who is saying that a vote of Censure and a vote of no confidence are two essentially things, to define what he means a vote of no confidence. I am saying, a vote of no confidence essentially means, we have lost confidence in that person. A vote of no confidence is not an institutional measure per se, it can also apply to individuals. We have lost confidence in you, to do the job! A vote of censure,as I said, in football terms, it is a Yellow Card.

THE DEPUTY CHAIRMAN: And that is what the Committee wants.

MR. AWORI: If the Committee is looking for a Yellow Card, then censure is not too light.

THE DEPUTY CHAIRMAN: But then, you are saying, censure is a
Yellow card.

MR. AWORI: It is too strong, I would rather we just remove the whole word of censure. We get on to the Red Card which is a vote of no confidence.

THE DEPUTY CHAIRMAN: Then what is the difference, between, for example, 3 says, becomes disqualified to be a member of the District Council,a vote of no confidence is one ground for this qualification.

MR. AWORI: We want to remove him.

THE DEPUTY CHAIRMAN: Yes, that is disqualifying him. He will be removed.

MR. AWORI: Then I move that we move the word, the phrase.

THE DEPUTY CHAIRMAN: Which one? So, you are saying we remove 3.

MR. AWORI: The censure.

THE DEPUTY CHAIRMAN: I put the question on Honourable Awori's Motion.

(Question put and negatived)

THE DEPUTY CHAIRMAN: Hon. Delegates, I propose we do it like this. Let us leave 5 where it is. Then after we have gone through, the Technical Committee will see where to place it. Either it may go in 2 or it can remain up where they are.The principle is understood, the problem is where it should go. Do we agree? So, I put the question on 5 as amended by Honourable Kutesa and Honourable Karuhanga.

(Question and agreed to)

MR. KATENTA APUULI: Madam Chairperson, I assume that we have finished with those - *(Interruption)*

THE DEPUTY CHAIRMAN: Let us put the question in Clause 1, because there was a lot of debate on it. I put the question on Clause 1, of 2 and 3, that it does stand part of this Constitution.

(Question put and agreed to)

Mr. OBUA OTOA: (Erute County North): Thank you Madam Chairperson. Madam Chairperson, there is sub-section (c) of that Clause 1. Is it done away with? It says, that the office of a member of a District Executive Committee shall become vacant if, at (c), a new Chairman assumes office. Has that been abolished or done away with?

Mr. KATENTA APUULI: Yes, we did that yesterday.

THE DEPUTY CHAIRMAN: We did it yesterday and then somebody brought something new, an insertion. So we sent back the insertion by a Motion brought by one of the Honourable members. Actually we needed to slot in that aspect, which we have just inserted.

MR. OBUA OTOA: Madam Chairman, if we passed that one, I think there is a problem. Because a new Chairman could assume office under new Clause 4, which was passed the other day. Does it mean if a new Chairman assumes office then all the offices fall vacant? What about if the assumption of office is as a result of somebody dying and being replaced in mid-term? Does he represent a totally new executive?

MR. KATENTA APUULI: I thank you Madam Chairman. Hon. Obua Otoa, I thought that really you would be satisfied with the rationale which shows up in the second paragraph, which says paragraph (c) provides a new Chairman an opportunity to select his or her own Executive Committee Members. That really is the purpose, that a new Chairman taking office should be afforded an opportunity to select. He could select the same group that are in the former Executive, but this opportunity should be available to that person. I hope that satisfies you Honourable Obua Otoa.

THE DEPUTY CHAIRMAN: Thank you very much, Honourable Katenta Apuuli. So, we go to Clause 2.

MR. KATENTA APUULI: Clause 2. *"A district Council may by resolution supported by not less than half of all the members of the Council pass a vote of censure against the member of Executive Committee."* Madam Chairperson, I beg to move.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: Clause 3. *"Upon a vote of censure being passed against a member of the Executive Committee, the District Chairman shall unless the member of the Executive Committee resigns his or her office, take appropriate action in the matter."* Madam Chairman, I beg to move.

MR. RINGWEGI SAM (Padyere County): I thank you Madam Chairman. Madam Chairman, I would like to seek clarification from the Chairman of the committee on what is meant by the Chairman taking appropriate action in the matter. Does he for instance, mean that even after the Council has decided that a member of the Executive is no longer fit to hold that position, it is still the prerogative of the Chairman of the Council to retain him or to remove him from that position? These are the matters I would like to be clarified on. I thank you Madam Chairman.

MR. KATENTA APUULI: I thank you Madam Chairman. Hon. Ringwegi, the Chairman could for example, take this kind of action. He could suspend

him, he could interdict him, he could cause police investigation, the procedure as to what follows is in Clauses 4 to 7. But he could immediately take action to address that matter, like alerting the police or suspending the lady or the gentleman or whatever action is deemed to be appropriate in order to handle that matter. It is not possible to anticipate every situation of every vote of censure, because situations will vary from time to time and from person to person, that is why we said appropriate action.

MR. RINGWEGI: Thank you Madam Chairman. The explanation given by the Chairman of the Committee would presuppose that Clause 4, 5, 6, are procedural in the nature that, a vote of censure would originate in a manner provided under Clause 4. Then what would follow upon notice of censure is contained in 5. These do not actually provide for the appropriate action which is consequent upon a vote of censure having been passed. I thought that the clarification I sought was, what the Chairman of the Council would do after the vote of censure has been passed by the Council. These are the appropriate actions that I had clarification on? Would he for instance, dismiss or revoke the appointment of a particular member of the committee? Is that one of the appropriate actions that the committee envisages in this provision of Clause 3? Because the rest of the provisions in Clause 4, Clause 5, 6 and 7, which the Chairman referred to, are only procedural matters,which originate from the vote of censure up to the time when it is passed. Appropriate action we are talking about is a resultant action after vote of censure has been passed. So, I am not really very clear in mind what the committee wants to achieve.

MR. KATONGOLE DIFASI (Bugabula North): Point of clarification. Thank you Madam Chairman. Another clarification I would like from the Chairman of the Committee is, what happens in case a vote of censure is being passed against the Chairman himself? What appropriate action would he take, the Chairman himself. Thank you.

MR. MUKWAYA ABBEY (Busiro East): Thank you Madam Chairman. I also have a problem with 3, as the Honourable Ringwegi was saying. I think in my view, the appropriate action in the circumstances will be for the Chairman to suspend that particular member of his Executive or her executive.And allow for the other procedural arrangements to take place or to allow 4, 5. and 6 to continue. That is the only logical thing the Chairman would do. It says that upon a vote of censure being passed against a member of the executive Committee, the District Chairman shall, unless the member of the Executive Committee resigns. If he does not resign, I think the appropriate thing to do by the Chairman, is to suspend the member so that he allows the other procedures to fall in place. That is my interpretation of 3. If it is so, if it is the wish of the Chairman of the committee, I will propose that we move an Amendment to accommodate my observation. Thank you Madam Chairman.

THE DEPUTY CHAIRMAN: Anybody seconding that?

MR. SAM KUTESA: Madam Chairman, there are no other procedures once the Motion has been passed. I think this is the problem we are facing. When Honourable Mukwaya says the Chairman to suspend him to let other procedures take place, there will be no other procedures because this says, upon a vote of censure being passed. So the matter has been gone through and the man should actually resign. There is no reason why we should suspend him awaiting other procedures, because the Motion has been passed.

MR. MALIRO GASTON (Mwenge County North): Point of information. I would like to inform the member who has just left the Floor and perhaps all the delegates, that the Chairman has powers to revoke the membership of any member of the executive. That is one of the appropriate actions he or she can take. As for somebody who was wondering what would happen to the Chairman, if there was a vote of no confidence, I think we have expressly provided for the methods of removal of the Chairman. He just needs to read that Article. I would like also to inform the members that, a vote of censure is not necessarily guarantee for dismissal, it is simply an accusation. If a person has been accused and his case presented, the results will depend on the gravity of his or her offence which may result in expulsion, suspension or just a reprimand. Those are the appropriate actions which the Chairman can take.

MR. KATENTA APUULI: Madam Chairman, I would like to suggest to Honourable delegates that we move this Clause 3 to the end of the entire Article. Up to the end of 7, it should become Clause

7 at the end of that line of clauses, then it makes sense. I hope that way, Honourable Ringwegi will be satisfied with what appropriate action is. I would like to request Honourable Delegates that we will consider the matter as taking appropriate action, because issues are going to defer, what kind of action the Chairman may take, will differ from case to case. We should not tie it down only to suspension, because it might be dismissal, it might be suspension. It might be handing over to the police or whatever. It might be recovery of property. I would like to appeal to you that we leave it as appropriate action, because there is no way you could pre-determine all the different cases that will come up, if you agree with our moving this item to the end of that line of Clauses. I thank you Madam Chairperson.

MR. OLEGA ASHRAF (Aringa County): Thank you Madam Chairperson. Madam Chairperson, we have just passed Clause 1 of Article 209 where we said that the office of a member of a District Executive Committee shall become vacant if, a vote of censure is passed, as we passed in No. 5. Now, to me, it looks like this Clause 3, is redundant. Once a vote of censure has been passed, that fellow automatically resigns or goes home, whichever he chooses. There is no choice in it. Madam Chairperson, I move that we delete Clause 3 because the position has been already taken care of under this small 5, of Clause 1 (d). I so move Madam Chairperson.

THE DEPUTY CHAIRMAN: So, there is a proposal that after we have passed 5, censuring any member by the Council. Then we come to No.2, that a committee further recommends the inclusion of the following Clauses,seeking to entrench vote of censure against a member of the District Council. We adopt it so that the District Council may by resolution be supported by less than half of all members of the Council pass a vote of censure. Then, we go to 4, a motion of censure shall be initiated. It has been seconded by Honourable Ringwegi, let us hear from Honourable Katenta Apuuli.

MR. KATENTA APUULI: Madam Chairman, I would like to appeal to Honourable Olega that let us re-formulate this Clause and save it by changing the word 'pass' to the word 'moved,' to read: *"Upon vote of censure being moved against a member of the executive Committee, the district Chairman shall, unless the member of the Executive Committee resigns his or her office, take appropriate action."* That is previous to any vote of censure being debated, like suspending the individual, like carrying out all these notices. So that you give the Chairman, a chance to get this person out of the way before a vote of censure is taken so that he does not or she does not interfere with any evidence. I think it can be useful by retaining it here, by changing, the word from 'pass' to 'moved.' So that action can start immediately a vote of censure is moved.

MR. KWERONDA RUHEMBA (Kajara County): Madam Chairperson, I would like to request the Chairman of the Committee to go back to the Article we passed, 212, 1 (I,) 5. 1 (b) says that position shall fall vacant upon passing a vote of censure. Once you pass a vote of censure, this man will vacate the office, he will have to resign. If this man has resigned, now what are you trying to look for in 3? 3 now falls by the way side. What we have to provide for now in 2,3,5 and 6 and 7, is the procedure as to how to move the vote of censure. So, Madam Chairman, I think the Chairman Committee 4 should try to move with us, by agreeing that we have already, passed in (b) above, 5. That once a vote of censure goes through, once it is passed,a member has no choice any more other than to resign.

DR. BYARUHANGA FABIUS (Kitagwenda County): Thank you Madam Chairman, I would wish to convince my Chairman of Committee 4 to desist from flogging a dying horse. Because what the Karuhanga, Kutesa Amendment did, was really to destroy our entire Article as we had visualised it. They have promoted this word 'censure,' they have given it a more concrete meaning. In our old view, censure was just some form of warning, but if it was serious enough, then the Chairman should consider retiring the Committee Member. But now, once a committee member is censured, he has to go and therefore, even the following Clauses that go through the procedure for this censure should actually be different from what we have now. That is why Madam Chairperson, I would like to request you to consider handing this whole Article to Honourable Kutesa and Honourable Karuhanga to draw out, the new procedure for this strong censure that results into automatic dismissal. Otherwise, we are just flogging a dying horse.

MR. RWOMUSHANA CHARLES (Rujumbura County): Thank you Madam Chairperson. Madam Chairman, my view is that, for half of the Council to be discontented with you, to reach the extent of moving a vote of censure, because even in part 7, it is stated that you will be given chance to be heard, to defend yourself. So, for a vote of censure to be passed against you, then it means the matter is very grave and if the matter is very grave, I do not see the reason why you should remain in office. You should be compelled to resign. The only person to fear for, is the Secretary for Finance, because if he refuses to give the tenders and sign their Vouchers, they may have a grudge against him and he may suffer. So he may be constantly intimidated, but if a vote of censure is passed against you, I do not see why you should remain in office, you should resign. Thank you Madam Chairperson.

MR. MULASSANYI JOHN (Rubanda County West): I thank you Madam Chairperson. I think to get things moving, it is true that the intention of the committee was not upon a vote of censure. The intention was that, the result would not be automatic dismissal. It would be sort of reprimanding or any action depending on the reasons why the vote of censure was moved. But now, because we have already passed 5,in order to continue, we should delete 3, as it stands now. So that we move, but during the Reconsideration Stage, I think we shall come up with some Amendments to cure this situation. Because we say we hand over, to a Committee, it will be confusing. I hope delegates will remember that even we had the same formulation with Ministers. They can recall what we passed when it relates to a vote of censure in Ministers. But I think for the time being, because we have already passed 5, let us delete, unless we re-visit 5 now. Otherwise, we delete 3 and re-visit it at Reconsideration stage with the same formulation as that of Ministers. I thank you.

THE DEPUTY CHAIRMAN: Let us hear from the person who initiated this query.

MR. RINGWEGI: I thank you Madam Chairman. Madam Chairman, I think we are getting derailed for nothing. There is a Motion by Honourable Olega to delete Clause 3. If we did that, we would arrive at the position now being advocated for by Honourable Musalu. That would leave us with Clause 2 which we have already passed, which is the procedure for getting a vote of censure. Then we would go to 4, which follows on to 2 on how a Council can initiate a vote of censure against a member of the Executive Committee. Clause 5 goes for more details of how that intended action can be achieved. Therefore, the removal of Clause 3 does not in any way prejudice the existence of the remaining Clauses 4,5, 6 and 7. This would be consistent with what we have already passed in the Amendment moved by Honourable Sam Kutesa which says that, once a vote of censure is passed, then the executive committee vacates his office. The rest will only be procedural matters. Therefore, I would rather we debated the Motion to delete Clause 3 and then we take a decision on that. I thank you Madam Chairman.

MR. KATENTA APUULI: Madam Chairman, I thank you. I am informed from our Technical team that once we pass Article 212 (b) 5, it would automatically contradict 3. So, I would request that we consider to delete 3, because it will be in contradiction.

THE DEPUTY CHAIRMAN: Thank you very much. So, I put the question that we delete 3.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, 3 is deleted. I think Honourable Ringwegi has explained that 2, 4,5, 6 and 7, will not be contradicted. I will call upon Honourable Ringwegi to convince the Members that this is not contradictory. Let the mover of the motion convince us, then I will open the Floor to some other members.

MR. RINGWEGI: Thank you Madam Chairman. I thank you Madam Chairman. Madam Chairman, as I said earlier on. Clause 4 of this Article only provides for how a Council can initiate proceedings against an Executive member of the committee of the Council on how to secure a vote of censure. It says that a notice of censure shall be initiated by a petition. This is just a procedural provision. Clause 5 says, the Chairman shall upon receipt of the petition, this is a petition by the Council. Then Clause 6, talks about the Motion for that resolution being debated until after a certain period has expired. Clause 7 gives the right for the member who is being censured to be heard and to defend himself. So, these are really procedural provisions which would culminate in either a vote

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of censure begin being passed or not being passed. They only provide for how a vote of censure should be obtained. Therefore, they do not conflict with any of the provisions we have already passed. They only strengthen the provision passed in Clause 5, which was moved by Honourable Sam Kutesa. Because if we do not provide for this, 4, 5, 6 and 7, then we would have a lacuna, we would not know how a vote of censure could originate from the Council and how it would be achieved. So, these are just merely procedural provisions and they should be retained. I beg to move.

MR. KATENTA APUULI: Madam Chairman, I am only attracting the pages to take my notes, I have nothing to add on, Madam Chairman.

DR. BYARUHANGA: Thank you Madam Chairman, my worry remains the fact that we are now considering dismissal of a member of the Executive Committee. Now, going by that for example, although we have already passed 2, I am not even happy with the half which we have already passed. That half of the Council once they are annoyed with you, can cause your dismissal. Later even in 4, I would like now to agree with Honourable Kutesa, that we should clearly put down the grounds that may cause a vote of censure to be moved against this official, which vote of censure if it succeeds will cause dismissal. Otherwise, we shall have votes of censure being moved oil flimsy reasons and yet when they go through, cause the dismissal of that official. That is why Madam Chairperson, I was appealing that let us have time to re-write this whole Article now that it has taken on a new meaning.If Honourable Kutesa is ready, let him move appropriate Amendments to these other Clauses, right from 2 up to 7. Thank you Madam Chairman.

MR. AWORI: Point of clarification. Thank you Madam Chairman. I am seeking clarification from the Committee on a matter of the parameters of this vote of censure. Madam Chairman,if we repeatedly, more than twice passed a vote of censure, in any number of these secretaries, will it amount to a vote of no confidence in the Executive Committee?

MR. KATENTA APUULI: Madam Chairman, Honourable Awori, that decision would be taken by the Council itself. The Council will look at the gravity of the matter, the behavior of the Secretaries, and then take a decision as to whether they should move against the whole Government. There is no way you could possibly put that in the Constitution and say, if twice, or two or three members misbehave, then let that be a decision that is taken by the Council it self. In fact, there should be grounds enough even for the first time, if a Secretary misbehaves in a particular manner and the Council is convinced that may be the Chairman over-looked this matter. May be he should have cautioned him earlier or he should never have picked this particular person in the first place. If the Council is convinced that they can move a vote of no confidence in the entire Government, nothing stops them from moving a vote of no confidence in the entire Government. But there is no provision as such, because you cannot pursue all the circumstances. There is provision for a vote of no confidence against the Secretary and also against the Chairman. But you can also move against the entire Government.

MR. KAJARA ASTON (Mwenge County South): Point of clarification. Thank you Madam Chairman. Madam Chairman, I would like clarification from the Committee, why they thought it wise to put all this detail in the Constitution. Madam Chairman, we have already passed provisions regarding the grounds for which a member of the executive committee can be removed. We have also Madam Chairperson, in Clause 2, agreed that the District Council may by a resolution supported by the number of not less than half of all the members of the Council pass a vote of censure against the member of the Executive Committee. So, I was wondering and that is why I am seeking explanation from the Committee, why they thought it necessary to include this unnecessary detail in the Constitution when it could have also been provided that procedure for censure or procedure for removal for a member of the Executive Committee can be arrived at by Parliament. In otherwords, Madam Chairman, we would have provided that Parliament may by law provide for the procedure for removal of a member of the Executive. This madam Chairman, would assist to vary the detail in the future. Supposing there were other grounds of censure, supposing this procedure can be changed in the future. Now, if you have to change that procedure, you would have to go back to the Constitution.I would have thought this would have been left to Parliament and Parliament can vary that procedure from time to time. I beg to move.

MR. KATENTA APUULI: Madam Chairman, I do not really wish to take a lot time of Honourable members, but the explanation is given. The Committee chose in the rationale, page 21, the committee chose the option to spell out the manner through which a member of the Executive of the District Council can be disciplined. This is to enable the Executive Committee to get on with its work as soon as the Constitution comes into force. This alternative option is to leave the details to the next Parliament to work out. The Committee was conscious that this arrangement might take time, the Committee preferred a vote of censure to a vote of no confidence and supported by more than one half of all of the members of the Council to bring this provision in line with Article 121 of this Draft Constitution.

THE DEPUTY CHAIRMAN: So, Honourable Katenta Apuuli, Honourable Kajara is opting for the alternative you gave.

MR. KATENTA APUULI: That is up to the plenary to decide, but we feel that Parliament may not be able to deal with this matter immediately. We are sending a lot of money and a lot of responsibility to the district. By the time the Parliament comes to deal with this particular matter, a lot of things could have gone wrong, that is why we chose to do it here. After all, in Article 121, this is borrowed business, we borrowed it from that Article. It is already detailed in the Constitution in as far as the National Executive is concerned, we did not add anything new here, we just borrowed it.

MR. BIDANDI SSALI (Nakawa Division): Madam Chairperson, in addition to that, I think we members in this Assembly must be very clear of what we want. In one aspect, we are saying we want to streamline, so that what is happening at the National level - should be happening at that District level. Because the powers at the National level have been sent down at the District. Now, in some other decisions we have said, let us streamline, let us separate powers and so on. Now, in the next breath, we are saying, no, in this particular case, let Parliament set out the procedure. I think in the end you will find that although we are trying simulate what is at the national level to be at the local level. When Parliament comes in and does what Honourable Kajara wants to be done, you may find that the basis put in place will be quite different from that which have put in the Constitution in respect for example of the Ministers.

MR. KAJARA: Point of information Madam Chairperson. I would like to inform the Speaker on the Floor, that if you turn on page 17 of this Draft, Article 209, of the Report, we have already passed a provision that Parliament shall prescribe the procedure for removal of a district Chairman or the Speaker of a Council under this Article. So, I do not see why Madam Chairman, Parliament cannot prescribe or to the procedure of a member of the Executive if it can provide for the procedure for removal of Chairman or even the Speaker.

MR. OKALEBO EPHRAIM (Bukedea County): Thank you Madam Chairman. I begin by saying Madam Chairperson, that, the peoples' Constitution must be clear. Must be easy to follow and be understandable by the majority of our own people and the basic procedure of whatever we intend to do, whether now or in the future should be given now and here by us and not by the future. It is better to over-do than to under-do, because under-doing, may bring in shortages which may lead us into problems. And peoples' Constitution should be given in abundance, Madam Chairperson. I have often witnessed us here hiding behind certain ideas of this is not constitutional, this is procedural, this is what. Sometimes that is in a way avoiding what we should do here in this House and what we have come to do. Now, there is nothing wrong I see Madam here, in putting this procedure for the purposes of creating uniformity of application throughout the country once this Constitution comes into force. Now, why do you say, let Parliament come, and supposing there is need before Parliament puts in place a procedure? To whom do we turn for a procedure? I think a procedure should be provided by the Constitution right from the beginning and people should be able to go ahead and process whatever they need to do in their Districts.In accordance with the Constitution and which is uniform throughout all the District Councils. So, the idea of saying that let us leave this to Parliament, Madam Chairman, is in a way shelving a problem and leaving it to the future and that may be a problem to us who are here now to make a Constitution when we leave out what we should have included. Thank you.

MR. BIDANDI SSALI: Thank you. Just to conclude briefly, I would personally feel that, let us run away from these details, not because it is unnecessary detail, that is, to avoid responsibility. But because it is a binding detail that is subject to

perhaps being changed within a short time. If that is the reason, and the reason is given properly, then that is a different reason. But for one to say, that this is unnecessary detail, that can be handled by Parliament and without proving that it is dangerous, or it is harmful, I think it is avoiding responsibility.

DR. KABERUKA WILLIAM (Ndorwa County West): Madam Chairperson, my view was that to save time, we should move to Honourable Kajara's Motion. I think most of us agree with it that these details are unnecessary. As time comes, some of these provisions or grounds may change and for ease of doing things in future, we should leave this work to Parliament. So that when circumstances change, the Parliament is able to move with time. So, I would implore Honourable Kajara to move his Motion and then we proceed. I thank you.

MR. KAJARA: Thank you Madam Chairperson. In view of the views expressed by the Members of this august House, as to the inclusion of too much detail in the Constitution.And in view of the fact that these procedures may be subject to change from time to time. And that can only be done by Parliament, I beg to move that we delete Clause 4, 5, 6 and 7 of the Report of the Committee of Article 212.So that we substitute that Parliament may by law provide for the procedure of removal of a member of the Executive. I beg to move.

MR. KWERONDA RUHEMBA: Madam Chairperson, I think procedurally we may be wrong, in that, if we found time to provide for removal of the Chairman under Article 210, the Chairman who is higher than the Member of his Executive Committee. Why can we not provide for the removal of this Committee member with the same reasons that we gave for the Chairman? For instance, here what we were lacking, was just one more reason and this was abuse of office and thing could have carried. Madam Chairman,I think we are procedurally wrong, that you do not provide for Parliament to remove a man in a higher office and you impose this duty on Parliament to provide for a very small man.

DR. KABERUKA: Point of information. Thank you Madam Chairman. I want to inform Honourable Kweronda Ruhemba that on page 17, we are saying, Parliament shall prescribe the procedure for the removal of the District Chairman or the Speaker of the Council under this Article. So we have already done that and therefore, it is in that spirit that Honourable Kajara is moving that concise short statement which is all embracing.

CAPT. BABU FRANCIS (Kampala Central): I think the prescription which has been given on page 17 is very clear in the case of a Chairman and a Speaker. It is in the same spirit that we want to have exactly the same sort of Clause for the Councilors. I was in fact, a few minutes ago asking if some expert can advise us. If we can use the same one and add on 'Council' at the end, or move it to the other area. Madame Chairperson, I think we are procedurally wrong in that you do not provide for Parliament to remove a man in the higher office and you impose this duty on Parliament to provide for a very small man.

DR. KABERUKA: Point of information. Thank you Madame Chairperson. I wanted to inform the Honourable member that on Page 17 we are saying Parliament shall prescribe the procedure for the removal of district chairman or the Speaker of the council under this article. So, we have already done that and therefore, it is in that spirit that Honourable Kajara is moving that concise short statement which is all embracing.

THE DEPUTY CHAIRMAN: Hon. Babu.

CAPT. BABU: Madame Chairperson,I think the prescription which has been given on Page 16 is very clear in case of a chairman and a speaker. It is in the same spirit that we want to have exactly the same sort of clause for the councilors. I was in fact, a few minutes ago asking if some experts can advise us. If we can use the same one and add on council at end. Or move it to the other area. We can move it in a different article.

THE DEPUTY CHAIRMAN: Hon. Katenta Apuuli.

MR. KATENTA APUULI: Madame Chairperson, I thank you. I rise to oppose the Motion moved by Honourable Kajara to delete and I will use very simple terms Madame Chairperson. I would like to draw the attention of this House and to go on record to inform you that there can be occasion when you will be dealing with a hostile parliament and there is nothing you can do about it either as an executive or as an administration. In those circumstances where you have a hostile parliament and wait until we in the parties take over, when we have

ability to use our whips and political manipulation, there is nothing you could possibly do that is right. I would like to appeal this House that if you really feel strongly about an issue, include it here in your constitution which will be much more difficult to change and manipulate. If you have that much trust in Parliament, I can assure you that parliaments are manipulable and political parties are experts at doing that. I thank you.

THE DEPUTY CHAIRMAN: Clarification from Honourable Senteza Kajubi.

PROF. KAJUBI SENTEZA (Kyadondo North): Point of clarification. Thank you Madame Chairperson. I have noted the reason that has been given by the chairman of the committee. But I would like to seek clarification as to why the same treatment was not given to the chairman and speaker where the provision was made that parliament would prescribe. Is parliament not likely to be hostile to speaker and chairman? What is the distinction between the two?

THE DEPUTY CHAIRMAN: You want to answer on behalf of the chairman? Okay, Honourable Bidandi Ssali.

MR. BIDANDI SSALI: Madame Chairperson, I would like to remind the Honourable Professor that decision was reached with the ayes and the nos. The ayes happened to be more but some of us are giving notice at the reconsideration that particular aspect be reconsidered in light of this information and more. We are creating a situation where we will have a repeat of what happened some time in the late 60s. When by virtue of the majority of politicians in the parliament, a decision would be taken legally by parliament but subjectively not in the interest of the system. My own example in 1965 was that I had fallen out but I was standing for the post of Mayor of Kampala. Now, they used the law, we went to the Attorney general. The Attorney General interpreted the law to say there is nothing that prevented me from standing for the mayorship. They whipped the party members, the party members refused. Now, they turned to changing the law. in the next one week, I was disqualified. The second one was when I was a member of the Electoral Commission with Honourable Ejalu. After our work, we intended to stand but we were not allowed politically, we were prohibited. So we contested for it and the Attorney General said there is no law that prevents them from standing. The next three days, there was law. So, -*(Laughter)*and these are facts. If Honourable Ejalu was here, he would have told you. So, we should not think, that the present arrangement, the present harmony, the present broad based will continue for the next 30, 40, 50 years. So, I think it is important that we go a little bit into detail. Not because we want to go in detail but because we have witnessed the loopholes that can be utilised by an unscrupulous politician for the sake of the interest of his party as against the interest of the country.

THE DEPUTY CHAIRMAN: Further information.

MR. KATENTA APUULI: I would like to give further information. Some of you are aware of the famous Nadiope act. You go and look up that act, then you will appreciate how parliaments can be manipulated. Nadiope was disqualified to be vice president. The act was manipulated and he became vice president and Kyabazinga of Busoga at the same time.

THE DEPUTY CHAIRMAN: Hon. Zziwa George.

MR. ZZIWA GEORGE (Kawempe North): Thank you very much Chairperson. I just want to warn members of the Assembly not to become to much oblivious of the syndrome of Parliament. We are all very confident that the present parliament cannot let the people down. But we have, as Honourable Bidandi Ssali said, to look at the future of other parliaments with different compositions. Majorities belonging to a particular party and in which case two thirds of that Parliament can change what it has put in the Statute. It can change it with a stroke of a pen and say yes, we are changing this statute. It is we who made it and for that matter let us change it by only whipping two thirds of members of the parliament. So, let us not become to much oblivious and say everything should be left to parliament. The second point I wanted to raise is,we have a transitional period. This is the period when the constitution comes in force and the period when parliament settles down and looks through the constitution and see what powers has been given to it. It is possible I am saying to overlook these powers to parliament during those few years, in which case governments that will come in immediately might find problems. Thirdly, I just want to

raise a point which has been used by the opponents of the decentralisation process. This is the argument that powers even to the districts can always be recalled. This is a very tricky and one has to be careful with this sort of argument put forward by the opponents of decentralisation. When you have these kind of powers, say parliament will do this, parliament will do this. The common man, the man we are representing here, will see justification to say yes, this is what they have been telling us all along that decentralisation means. You can always recall the power to the center. Madame Chairperson, with those remarks, I would like to oppose very strongly to exclude these apparently procedural matters from the constitution. Let us have them there for the time being. I am sure we shall have a very good foundation for the governments that are going to follow within the next few years. Thank you.

THE DEPUTY CHAIRMAN: Hon. Ngobi.

MR. NGOBI MATTHIAS (Presidential Nominee): Thank you Madame Chairperson. I would like to add my voice to those who oppose the amendment. The reason for doing so is that we must give a clear base on which the removal will be done. I do not think that in order to give that clear basis, we shall use a lot of words in order to make the constitution unnecessary long. We can give a precise basis especially on the procedure that is to be followed so that it will not be manipulated. It is important also that in this constitution since we have already decided that a Motion of censure will result in the member concerned to resign or to be dismissed. This is a very serious matter. We have got to include in the constitution some of the main reasons on which that type of censure will be based. Because right now as it is, we have mentioned the censure in Clause 2, but we have not given the grounds. There are arguments that if you do not give grounds, you enable people to find reasons. Some of which perhaps may not be so valid in the understanding of others. But at the same time, it is important that if there is a Motion of censure, we must define the reasons of moving that Motion of censure. Therefore, we also must provide the procedure so that it is not changed later on. I would agree with Honourable Bidandi and those others who think that the former article concerning the removal of the chairman should be revisited. I think we were too brief. We need to be clearer, but the fact that we passed it as it is, is no logical ground that we continue to make the mistake as far as this one is concerned. Let us do what is right here and if necessary we can revisit the others. But I think it will be a mistake for us to leave this work to parliament. There is also a point that since we are have defined ourselves under b (v), we need maybe to reshape these clauses. Whereby it may be necessary for the Drafting Committee or Sam Kuteesa who has moved this and Honourable Karuhanga to assist in getting the whole thing tied up so that it is properly done. But they must include some of the major basis for removing this notion of censure. I, therefore, oppose the Motion which calls for leaving this work to parliament. Let us do it here and finish with it. We know that this is the ground on which a member will be removed. I thank you.

THE DEPUTY CHAIRMAN: Hon. Adyebo.

MR. ADYEBO COSMAS (Kwania County): Thank you Madame Chairperson. Madame, I do agree with the wisdom of the last speaker. You see, we are trying to get a little too much out of this parliament and we are almost getting drank with the drink of parliament. Everything Parliament, parliament. Now, these parliaments are also made of human beings. I think what is important here is consistency Madame Chairperson. Let us be consistent. I do agree with the appeal of Honourable Okalebo about the consistency. Now, we said at the very beginning on the chapter of the executive that the president will be the executive and will be above or else in Uganda. In that venue we also made the chairman of the districts, Chief Executive. We agreed, that is consistency. In the Draft Constitution, Madame Chairperson, we went ahead to provide for the removal of the Chief Executive of the country, that is the president. In the same venue we also made provision for the removal of the Chief Executive in the districts, that is the district chairmen or chairwomen. That is consistency. We proceeded Madame Chairperson to handle the governments at the national level, that is Parliament vis-a-vis the governments at the district level. We make provisions for either removing the government or the members of the government called the ministers at the center, so we made a provision. Now, we are dealing with the procedure of removing members of the government at the district, since we have also made provision for the removal of members of the government in the center, that is, members of the cabinet, that is consistency. Now, I get a bit irritated when we come at this moment

and say leave this one to parliament. I am vehemently opposing the idea of removing this provision set by Committee IV. Let us leave the provision of the committee IV. They were wise enough, it is a matter of consistency, let us be consistent and if we are saying we decentralise the power to the district, let us be seen to be providing for this in the constitution. We should not just perambulate around and taking everything to parliament. I thank you.

THE DEPUTY CHAIRMAN: Hon. Mulassanyi.

MR. MULASSANYI: Thank you very much Madame Chairperson. I want to oppose this Motion to delete the article in question. We notice that there must be some time between the promulgation of this constitution and election of the members of parliament. Between this period, things must be happening and anything can happen to disrupt the smooth running of the council. Now, if you make this procedure a matter of parliament, what will happen during that period when there is no parliament in place? Secondly, Madame Chairperson, sometimes the Parliament does not act in good time. You may wait for legislation on any idea or any matter for a very long time. During that time, you will be in a fix you cannot move. I have been a member of the District Council for some time and the office of the Minister of Local Government who is here, has failed for two years to endorse our by-laws. If a Minister can fail to do that when he is a single person in the office, how much more will a parliament which is composed of so many people fail to do their duty in good time? I mean to say that if we leave this possibility to the parliament, then it is as good as saying nothing should be done because we are not sure. There is no guarantee that it will be done. Thirdly, Madame Chairperson, I think we are deliberately avoiding our responsibility by making reference to the parliament. I propose that we do this thing here and finish it so that by the time we promulgate this constitution, we have some place to fall back over just in case things go wrong. I thank you Madame Chairperson.

THE DEPUTY CHAIRMAN: Yes, Honourable Kabwegyere.

PROF. KABWEGYERE: Madame Chairperson, I move that the question be put.

THE DEPUTY CHAIRMAN: Let me hear from the Mover.

MR KAJARA: Thank you Madame Chairperson. I am surprised that the Members of this House have lost confidence in parliament. *(Interjections)* From the start we have empowered Parliament to do even what the president would have done. Every appointment, every decision has been referred to parliament for confirmation and for approval. All of a sudden we have become pessimistic about the role of parliament, that it will be unfriendly, that it will be manoeuvred. So, I am wondering why parliament will not be manoeuvred for all those powers we have given it. However, Madame Chairperson, in the interest of decentralisation as advanced by members of this House and in interest of empowering the people and also strengthening the district as a unit of local government, I concur that the Motion be withdrawn. *(Applause)*

THE DEPUTY CHAIRMAN: Thank you very much. Hon. Delegates, the Motion has been withdrawn. Honourable Ngobi brought another dimension that while we are discussing the procedure for how we can carry out the censure, we also have to look at the grounds. They were not spelt out. I want to request the chairman of the committee, Hon. Katenta Apuuli, this is addressed to you. Hon. Ngobi said that okay, we have passed 2 that by resolution, supported by not less than half of all members of the council, pass a vote of censure against a member of the Executive Committee. He was saying that before we go to the procedure, we need to know the grounds. So, you jumped straight from the aspect to the procedure without looking at the grounds. That was his question, but then the Motion on the Floor was on deletion. So, I left it because it would have fallen by way-side. Can you please see how we move?

MR. KATENTA APUULI: Madame Chairperson, yesterday Honourable Kuteesa did move that grounds be specified clearly. I thought that we had dealt with that matter. He did move and added a number of items as to the grounds themselves. I thought those grounds were sufficient. The alternative suggestion I would say would be, let us lift the grounds for the removal of the chairman and insert them here because they are fairly comprehensive.

THE DEPUTY CHAIRMAN: Hon. Musene.

MR. MUSENE MASALU (Manjia County): Thank you Madame Chairperson. I think my chairman has not addressed himself to Clause 4

properly because Clause 4 states that notice of censure shall be initiated by a 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 member of the Executive Committee. So, this dissatisfaction with the conduct is a ground for moving a vote of censure or performance. So, I think the grounds are covered under this Clause 4. But maybe to make the exercise more complete, I would propose that we could add another clause to the effect that parliament may prescribe any other grounds upon which a vote of censure may be moved in addition to what we have in Clause 4. I thank you Madame Chairperson.

MR. KATENTA APUULI: I would tend to agree with that Madame Chairperson.

THE DEPUTY CHAIRMAN: Clarification from Honourable Maliro.

MR. MALIRO: Thank you Madame Chairperson. I am seeking clarification. When Honourable Musene read Clause 4, he said that one of the reasons given is failure to perform, dissatisfaction with performance. If I remember well, yesterday, we were discussing something to do with performance and we said we cannot measure performance. Now, we have up in Clause 5 which we have passed, said that somebody in whom a vote of censure is passed, shall have to leave his office. Are we now saying that if people are dissatisfied with just performance that is one of them,conduct or performance? If the councilors are dissatisfied with the performance, then that person must leave office? When yesterday we said that one could not be a ground for removal of a person from office, Madame Chairperson. I am getting confused because our original intention was that censure does not necessarily lead to dismissal. We have now passed an unfortunate paragraph which says that one leads to dismissal. If that is the case, then I think we may have to delete this question of failure to perform because we said yesterday that failure to perform should not be a ground for dismissal of person.Because it cannot be measured.

THE DEPUTY CHAIRMAN: Information from Honourable Liiga.

MR. LIIGA ALOYSIUS (Buvuma Islands): Thank you Madame Chairperson. I would like to inform the Speaker on the Floor that the offices to which these provisions apply were set out yesterday as being the District Chairman, the Vice Chairman and the Secretaries. Now, these specific individuals have certain duties to perform. If say, a secretary for finance has failed to put down a machinery for collecting taxes, his performance there comes in question. If the Secretary for defence fails to set out a system to police the district, his performance comes in question . In those circumstances, Madam chairperson, this provision applies. The performance we were talking about yesterday was some kind of a vague situation where any person can come up and say, his performance is not satisfactory. Therefore, we move a vote of censure on him. These ones are specific and particularly directed towards the duties which the particular member of the executive is supposed to perform. Thank you Madame Chairperson.

THE DEPUTY CHAIRMAN: Hon. Delegates, let us remember one thing. Somebody who has an executive job and somebody who is just a councillor, the performance of councillor perhaps will have to be rated. Say, if he does not talk twice in a week, he will be rendered incompetent. So I think we should take the explanation by Honourable Liiga. This one is a councillor. I can decide not to talk but give my motions to second the Motion. So, what would you do? Hon. Bidandi Ssali.

MR. BIDANDI SSALI: Madam Chairperson, the reason why we said no yesterday, to removing a chairman on the basis of performance is because it was not the council that elected the chairman to perform. But we said that if the chairman was not performing, then the electorate was free to remove him. Now, in this particular case, the Members of the Executive are in effect appointed by the council. Who assess the performance of each particular Member of the Executive by the virtue of the fact that they have to approve. Therefore, since they approve, they appoint, they know what these Members of the executive should do, they are in a position to assess whether they have lived to the expectations or not. So it is the electorate of a person that assesses the performance. Therefore, it is in order for the council to remove a Member of the Executive on the basis of failure to perform according to expectations by the council.

THE DEPUTY CHAIRMAN: So you are saying we spell out the ground?Because that is what we are talking about.

MR. BIDANDI SSALI: I am saying performance could be one of the reasons for censure.

MR. MULENGA JOSEPH (Democratic Party): Thank you, Madam Chairman. Madam Chairman, I want to stress the need for consistency. First of all, let me say I do not agree with Honourable Bidandi Ssali's distinction between what was decided yesterday and now. The reason for yesterday's decision was not simply that the electorate have the right to measure what performance the chairman has done. One of the major reasons was that to measure performance is too subjective. Now, in this case we are talking about Members of the Executive that is the secretaries. We are saying if this clause were to remain as it is, two-thirds of Members can say we are dissatisfied with the performance. In fact, yesterday we said it is difficult to measure the degree of performance. The consistency I wanted to underline also is that when we are dealing with the Executive regarding the censure by Parliament of a Minister. The same words were addressed and this Plenary referred back the relevant clause to Committee Two to come out with more specific grounds on which a Minister may be so censured. I would suggest, Madam Chairman, that in order to be consistent these secretaries also should not come under this general cover of failure to perform. But specific reasons should be given and if need be Committee Four be asked to formulate them. Because this one is too general and can be over exploited.

DR. MUSANA SOPHIE (Buikwe County North): Thank you, Madam Chairman. I concur with the people who say that we need more details in endorsing the grounds for censure of Members of the secretaries at the districts. I think what we need is to reformulate Clause 4 by laying down the grounds to read as follows: *"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 on the following grounds; (a) abuse of office; (b) misconduct or misbehaviour; (c) physical or mental incapacity; (d) any other ground as Parliament may by law prescribe."* I beg to move.

THE DEPUTY CHAIRMAN: Is that seconded? Hon. Delegates, I think you are trying to do what it seems you are not very sure of. I think I will concur with Honourable Mulenga. This was earlier raised but I said let us try to debate it and see how far we can go. There is a proposal that if a similar item was deferred, unfortunately I was not in the chair so really I cannot visualise what it was. But there is an opinion that something similar was deferred. Why don't we ask the Committee working on it to do the same on what we are discussing? We are saying it is remaining but let us do so that they come back with something similar.

MR. KATENTA APUULI: Madam Chairperson, I would like to accept that ruling.

THE DEPUTY CHAIRMAN: At least now we have some kind of what we call terms of reference, we have debated, we know what we want. We are saying something similar was done with a similar argument. So let us ask that Committee working on the provision for either the Minister or Parliamentarians to bear the same with the council Members so that we are consistent.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So we give this one to do a similar job so that when they come back we shall be consistent. At least we now know what we want after that thorough debate.

MR. KATENTA APUULI: Madam Chairperson, I do not know whether that also affects Clause 8 which reads: *"For the avoidance of doubt nothing in this Article shall prevent a person being re-elected to the executive committee of a district council."* Do we need to defer this as well or we can deal with this here?

THE DEPUTY CHAIRMAN: I do not know. Was that one also included for the post of the Ministers and so forth? I think it does no harm, if they bring it as it is. We shall adopt it as it is here. Any contrary view?

DR. MAGEZI DAUDI (Jinja Municipality East): Madam Chairperson, I am not comfortable with this proposed amendment. Clause 8, the one that has just been moved by the Chairman of the Committee.

THE DEPUTY CHAIRMAN: No he was enquiring whether we also pass it on to the committee or we debate it.

DR. MAGEZI: I suggest that it goes back to the committee because if this person has gone against the Leadership Code it has its penalties. There could be a conflict whereby this Clause could now mean to supersede what is provided for under the Leadership Code or any other judgement by a court. So I think this matter also should be looked into and there must be exceptions with this automatic re-election to the committee.

THE DEPUTY CHAIRMAN: Any contrary view? Are you in favour of debating it now? If not then what are we discussing? We are saying we are pushing it to the committee.

MR. KWERONDA RUHEMBA: Thank you very much, Madam Chairperson. I find there is a problem within this clause. It is talking about re-election of committee members but these committee members as provided for in the previous clauses, they were being nominated. So what are they talking about when they talk about election? Are they saying this man should be re-elected as a councillor or are they, saying he could be renominated. In any case I find a problem that this man having been censured and he is out, immediately after he is renominated! Even that one is problematic, Madam Chairperson. Can I be clarified?

MR. BIDANDI SSALI: Madam Chairperson, this particular provision referred to a situation where the whole executive has been voted out. It has been subjected to a vote of no confidence and the government is failed as it were. In the reconstitution of a new executive the individual member, for the avoidance of doubt, an individual member of a fallen executive should not be prevented from standing for election simply because he was a member of a full government which has been voted out. This does not refer to a case of an individual person who has been voted out and then in the course of electing a replacement, he stands again. I think that is not the message that was meant.

THE DEPUTY CHAIRMAN: Honourable Katenta Apuuli or Honourable Bidandi Ssali, what would be the difference between 'or of,' if we substitute it with 'or?' Because his question was a district committee or of a district council? Would it have been to the District Committee or a District Council? Because definitely the executive committee is of a district council. We are talking about the district council. What is the purpose of that 'a district council' might it not have been 'or a district council,' might it have been an alternative? Because it reads: *"For the avoidance of doubt nothing in the Article shall prevent a person being re-elected to the executive committee of a district council."* I am saying perhaps it could read: *"For the avoidance of doubt nothing in this Article shall prevent a person being re-elected to the executive committee or a district council."* I think there is something wrong. I think it is good we clear this before we push it on to the committee.

MR. KADAMA (Butembe County): Madam Chairperson, I think there is some flow in Clause 8 with regard to the word 're-elected.' Under the current system of the RC,I could see it being relevant because when a whole committee is voted out, members are allowed to stand individually to be re-elected. We are talking about secretaries being appointed by the chairman under this Constitution. The whole council then would debate as to whether a person has to become a secretary. So I think it becomes irrelevant to put the word 'if re-elected' under this clause. My feeling is that should may be a new chairman come in, he should not be refused to appoint any one of the former secretaries but re-elect seems to be relevant. I think re-appointment.

MR. KATENTA APUULI: Madam Chairperson, I would like to request Honourable Delegates that let us push this matter back to the committee like all the others. It has a structural problem.

THE DEPUTY CHAIRMAN: Okay but it is good you have been alerted to that structural problem. Thank you very much Honourable Kweronda Ruhemba for having aired that problem.

MR. KASANGAKI PANTALEO (Buruli County): Thank you very much, Madam Chairperson. Madam Chairperson, I just wanted to know from the chairman of the Committee Four why he has not provided for the principle of collective responsibility for the executive committee. Whereas we have done the same in Article 120 to the fate of the Ministers. As we have already understood the central powers have been delegated to the districts, I thought this principle should be incorporated in this section, in the present Article which we are discussing. Can I get that clarification, Madam Chairperson?

THE DEPUTY CHAIRMAN: Okay, let us hear from Honourable Bateganya.

MR. BATEGANYA DICK (Bukooli Central): Thank you, Madam Chairperson. We are trying to entrench the question of powers throughout the whole system I think it has a limitation at the lower levels. In that some local governments or districts have fewer councilors than say you would find at the national level. There are districts with a council of less than twenty. So if you went to great lengths to implement separation of powers you would find at one time that the executive and the council are almost the same and there is no way you can separate the two. So I would like to inform my colleague here that it might not be possible at that level to implement separation of powers effectively. Thank you, Madam Chairperson.

MR. KATENTA APUULI: I would like, Madam Chairperson, to add to what Honourable Bateganya has said that the level of sophistication at the district is much lower than that at the national level. That is why we did not provide for collective responsibility. We charge the responsibility of a district to the chairman and whatever goes wrong in his committee he should be really held responsible. He is the person who was elected by all the people.

MR. BAGEYA PATRICK (Kigulu North): Madam Chairperson, I am expressing my discomfort about Clause 8.

THE DEPUTY CHAIRMAN: But we have referred that one to the committee that is going to work out the whole section, from 4, 5, 6, 7 and 8, unless if you are alerting the committee about what you want them to do.

MR. BAGEYA: May be I will go to the committee and try to convince them. Thank you.

MR. KWERONDA RUHEMBA: Madam Chairperson, I wish to express myself on the fact of collective responsibility. Decision is taken by the chairman and his secretaries. I am sure they should be binding on all those members. Otherwise, Madam Chairperson, we shall have a situation where these people will take a decision and some of them will go out to decampaign those decisions. Madam Chairperson, I am talking out of experience, we have already had a situation in my district where the LDU's were trained and they were posted in a certain Gombolola. This decision was arrived at by the council but right now you find some council members running around and saying this was a job of the chairman and that they had nothing to do with it. Whereas we know that training LDU's has been a consensus arrived at by the districts. Funds were released to train these people, posting was done according to agreed terms but you find some members decampaigning the chairman along this scenario. Madam Chairperson, if we do not provide for collective responsibility I think we shall have erred. I know these people as the chairman has stated they are not very sophisticated but at least we should introduce a culture of having decisions binding upon those people who have taken those decisions. Otherwise we shall have people jumping out of decisions they have taken together.

THE DEPUTY CHAIRMAN: So what is your conclusion?

MR. KWERONDA RUHEMBA: My conclusion is that we should provide for it in this Article, we should provide for collective responsibility in this Article.

THE DEPUTY CHAIRMAN: So you are asking the committee to do the same or you are moving a Motion.

MR. KWERONDA RUHEMBA: I am asking the committee, Madam Chairperson, to also take into account this question of collective responsibility because collective responsibility must even go down to RC 1. I do not see the sophistication he is talking about, Madam Chairperson.

MRS. KALEMA RHODA (Kiboga County East): Thank you, Madam Chairman. Madam Chairman, I am very unhappy about this Clause 8. I would like it to be deleted.

THE DEPUTY CHAIRMAN: Hon. Kalema you are off point because we have deferred it. The committee will decide whether to delete it or not. We have already made a decision and we voted on it. Are you advising them to delete it? Advise them, no debate, because we have already done it, we have pushed it on to the committee, even voted on it that those in favour of pushing it on, they agreed. So now you are uncomfortable, you are re-opening the debate. Go to the committee and tell them what you want to tell them. Thank you very much.

MR. KASAJJA PATRICK (Bulamogi County): Thank you very much, Madam Chairperson. I strongly support the addition of the clause to deal with the collective responsibility. Madam Chairperson, the reasons that have been given by Honourable Bateganya and the chairman of the committee - *(Interruption)*

MR. ABBEY MUKWAYA (Busiro County East): Procedure. Madam Chairperson, is it procedurally correct to continue debating that Article when the House had agreed that the whole of the Article should go back to the committee for rearrangement? If there are new clauses or if there are clauses to be deleted, for them to be handled there. I think my view would be moving to the next Article. Is it right to continue debating this Article when the House, Madam Chairperson, had agreed that we refer it back to the Committee?

THE DEPUTY CHAIRMAN: Hon. Kasajja, we agreed that we push this one on, so as I have advised Honourable Kalema, join the committee and give them your views. They debate it in your presence and you agree because whatever we are discussing on it here, we are not imposing it on the committee. You can air that view then you have to air it in the Plenary because that issue is no longer a plenary issue. Thank you very much. Hon. Katenta Apuuli, can you proceed please.

MR. KATENTA APUULI: Madam Chairperson, yesterday I sought your indulgence and the indulgence of Honourable Delegates and you allowed me to skip Item 12 on page 19. I do like to request Honourable Delegates that we go to Item 12, page 19, because its time has come for debate. New Article 212 Chief District Administrator. The Committee recommends that a new Article 212 be introduced in the Constitution to read: *"Clause 1, there shall be for every district a Chief District Administrator."* Madam Chairperson, I beg to move.

DR. KINYATA STANLEY (Kinkizi County East): Thank you very much, Madam Chairperson. Now, whereas I entirely agree with the introduction of the new Article, I do disagree with the title of the Chief District Administrator. Madam Chairperson, we have already passed the Article that the chief of the whole district is the Chairman. This Article would be misleading especially in the terms of the title. The Chairman of the whole district is the Chief District Administrator and he has to be elected on universal basis. Therefore, we cannot put another person to be the Chief District Administrator almost on parallel with the Chairman. Therefore the question of the changing of the title I would like to propose, Madam Chairperson, that this person who is now going to be appointed by the district Service Committee be called the Chief Administrative Officer rather than the Chief District Administrator. So I beg to move.

MR. KATENTA APUULI: Madam Chairperson, the Honourable Delegate said that he was disturbed by the word 'Chief.'But even in his formulation the word 'chief' comes back. That is the question of a name and as Shakespeare said,"What is in a name?" I cannot fight him for just the name. If it is the consensus of the Plenary to change the name I would be happy to go along.

MR. RWABITA DEO (Ibanda South): Thank you very much, Madam Chairperson. Madam Chairperson, I can see the intention of the committee was to create another office that will be held by an Accounting Officer of the district. Madam Chairperson, first of all, in order to get the right name I would first go to Clause 2. I disagree with the decision of the committee that this Administrator should be appointed by the District Service Commission. Madam Chairperson, if we are to have this district get some transparency and checks and balance, we must get a third party. At least, from the Central Government to over-look what they are doing at the district level. If we have to leave these people do everything by themselves - *(Interruption)* the result is that accountability and transparency will be compromised.

THE DEPUTY CHAIRMAN: Hon. Rwabita, there is a point of order.

MR. MASALU MUSENE: Madam Chairperson, is it in order for Honourable Rwabita to start deliberating on Clause 2 when we are on Clause 1.

MR. RWABIITA: Yes, Madam Chairperson, I said - *(Interruption)*

THE DEPUTY CHAIRMAN: Wait. Hon. Rwabita, if you wanted to be heard you should have informed us that you need information from the chairman of the committee on (1) so that you can make a decision by referring to (2), that is admissi-

ble. One can refer to any provision in the Draft as long as one is substantiating a point or he is asking for clarification. He is not debating (2) but he was just making reference to make (1) clear, that should be my interpretation.

MR. RWABIITA: Correct. Thank you very much, Madam Chairperson. That is why I am saying that to get the right name for this officer it is important that we place him in the right area. Is he going to be appointed locally or should he come from the Central Government? He can be a proper Accounting Officer by linking the finances of the District with the Central Government so that there can be transparency and there can be checks and balances.

THE DEPUTY CHAIRMAN: Hon. Rwabita, if you go to page 33, I see something as the Central Government Representative. What will that be, Page 33, Item 24 in the report.

MR. RWABIITA: No, that one is different. This one is supposed to be the Accounting Officer.

THE DEPUTY CHAIRMAN: You are talking about the link with the Central Government.

MR. RWABIITA: Yes, but here we are talking about funds.
The so-called Chief Administrator is like the former D.E.S, the District Executive Secretary. So, the name of Chief District Administrator is confusing. Because when you say Chief District Administrator, it looks as if this is the top man in the district. The name Chief Administrator seems to be giving a wrong impression or sending a wrong signal colliding with even the Chief Executive who is the Chairman now R.C.5. So, unless necessary, we can keep the old name, 'District Executive Secretary.' What is wrong with that? Therefore, I would prefer we keep the old name of the District Executive Secretary rather than bringing in the Chief District Administrator which will again confuse people in differentiating who is who in the District. I thank you. Madam Chairman.

MR. PINTO EMMANUEL (Kakuuto County): Madam Chairman, I was actually going to speak in support of Dr. Kinyata's Amendment, but now you have counselled that we should debate the Article per say. I have heard what Honourable Deo Rwabiita said. There is no need for us to change the name from the District Executive Secretary to a Chief District Administrator. Already we had the District Administrators in the districts. They were known to be what we currently know as the Central Government Representatives. To avoid confusion with the past administrators, I think the Committee should accept to change the Chief District Administrator and remain with Chief Executive Secretary. If, however, there is any strong reason why it should not be the Chief Executive Secretary, I would go along with what Dr. Kinyata has said. The Administrator denotes an administrator overall and I can see that we already have a Chief Executive of the District in the title of the District Chairman. I see that this so called administrator is going to be in charge of services, administrative offices of finance, agriculture, health, education heading all departments. I therefore, Madam Chairperson, do accept that this is necessary provision to have such a head of civil service. I would recommend in the first instance to retain the current District Executive Secretary to avoid the confusion of the past where you had the District Administrator. Thank you very much.

THE DEPUTY CHAIRMAN: Hon. Delegates, we have three scenarios. One, we have the Chair, who is an Executive Chair. So there is that word 'Executive.' In the present situation, we have the D.E.S. There is the word 'Executive.' So there will be a conflict between the two Executives. Then the word 'Administrator' also had a problem because it conflicts with the current District Administrator or Central Government Representative who is a political head. Hon. Kinyata is saying, he wants to get rid off all those terminologies and make it the District Administrative Officer. So, let me move this Motion when we are sure of those scenarios.

DR. KINYATA: Madam Chairman, first of all the District Chief Executive is the Chairman of the District. Then we have already passed that the Heads of Departments who are going to be appointed by the Chairman with the approval of the District Council are going to be called 'Secretaries.' In order to differentiate this man who is going to be responsible for the administration of the district especially as far as accountability is concerned.I am proposing Honourable Delegates that he be called 'Chief Administrative Officer,' instead of other words which can be confused with other nominations we have made. I beg to move.

DR. MIYINGO KEZIMBIRA (Bukoto Mid-West): Thank you, Madam Chairman. I think the Amendment brought by Honourable Kinyata together with what is in the Committee Report are really not in conflict. Each of them I think works quite well. So, the House can adapt any of them. But as regards the fact that there would be a confusion between the Chairman of the District and Chief District Administrators as pointed out by Honourable Rwabiita. I think this exists. The District Chairman is a political head. While the Chief District Administrator is the Chief Civil Servant. Then as to whether this person should be appointed by Central Government or not -*(interruption)*-

THE DEPUTY CHAIRMAN: Hon. Delegate, we have not gone there. Debate 1, 2, (1). Then we shall move to 2.

MR. BIDANDI SSALI: Madam Chairman, I remember we spent hours and hours in the Committee over this question of nomenclature. As one of the Members has said, we first of all distinguished the content. I think every Member is aware that we are talking about the office of the present District Executive Secretary. In other words, the Permanent Secretary to the Chairman. Now here we are talking of the name of District Chairman. So, when you talk about the District Chairman you are talking about the boss. now in the name of the Chairman, the word 'Executive' does not come in. It only comes in when you are explaining his duties. Now, when you take the proposal by Honourable Dr. Kinyata, there will also be a problem. We are saying, Chief Administrative Officer. Then we have the Chief Agricultural Officer, then we have a Chief something Officer and all these come under the Chief District Officer and the demarcation there is very, very thin. That is why we thought of a name that comes out. When we talk of a Chairman of the District is very clear. When we talk of Secretary for this within his Cabinet is very clear. So, if, in view of Dr. Kinyatta, that name is wrong. Then the Chief Administrative Officer is also faulty in that it will not stand out to be responsible for all the Chief Officers within the District.

DR. KINYATA: Madam Chairman, for the information of the Speaker on the Floor the District Heads of the Departments are not called Chiefs. They are called the District something Officer, District Education Officer, etcetera. But they are not Chiefs. This is the only man who will be called a Chief.

MR. KITAKA GAWERA (Bbale County): Madam Chairman, as an experienced and professional administrator, I am prompted to agree with Dr. Kinyata's proposal in the sense that it will remove all the ambiguities. All the confusions that may arise and my Colleague here who has at one time been a Permanent Secretary and very experienced in what is in the civil service concurs with me. This will be most appropriate and again to confirm what Dr. Kinyata has stated that the other district officers or district agricultural officers they need not be designated as Chief Agricultural Officer and the rest. I would therefore, appeal to my colleagues the Honourable Delegates to see that we agree and take Dr. Kinyata's proposal. This is rational and in accordance with the professional administrative arrangements. Thank you very much.

MR. KITARIKO ROBERT (Democratic Party): Madam Chairman, I would like to agree with Dr. Kinyata's proposal. This position affects the head of this service who is responsible to the district service committee for appointment, discipline, confirmation, promotion of people working in the district. So, he exercises two functions. Personnel and accounting aspects of the district. So, I believe the title 'Chief Administrator Officer,' would be good and a better proposal than the others made by the Committee. I beg to support Dr. Kinyata's proposal.

MR. NASASIRA JOHN (Kazo County): Madam Chairman, let me state that I am extremely comfortable with most of the title names used in this Chapter right from the district chairman and the rest. But coming to this Article, I do find a problem with the proposed name of Chief District Administrator. Even the Chief District Administrator, if you see the new structure at county levels, then they will be called Assistant Chief District Administrators, which is not very realistic with the administration structure of the district. Having said that, I support Honourable Dr. Kinyata's amendment to a level. He says Chief Administrative Officer. I wanted to convince Honourable Kinyata if he accepts, whether he should put in the word 'district' to reflect that this is an administrator at the district. Thank you, Madam Chairman.

DR. KINYATA: Madam Chairperson, I would not have any objection to that since work will be covering the entire district.

THE DEPUTY CHAIRMAN: Now, the Motion on the Floor is we change that the terminology to 'Chief District Administrative Officer.'

MR. KADAMA: Madam Chairman, I am personally convinced with the clarification from Honourable Bidandi Ssali, that the District Chief Executive who will be the District Chairman, I think the words are simply of his office. Otherwise we have the District Chairman who will still have to be. I did not see why we did not have the District Executive Secretary as we have today because they will not conflict whatsoever. May be the Committee could clarify to us what they felt so uncomfortable with in the name of the District Executive Secretary.

MR. AWORI AGGREY: Madam Chairman, I am seeking clarification from the Honourable Chairman of the Committee whether they considered the position of District Principal Secretary as a coordinator.

MR. BATEGANYA: Madam Chairman, I would like to offer the following explanation as the reason why we dropped the name D.E.S or District Executive Secretary. In the Article we have passed, we have said that the Chairman will appoint secretaries to various offices in the districts. So, we shall have a secretary for Finance, secretary for Education and Secretary for whatever. Those are secretaries who belong to the Executive Committee of the districts. So, they are also District Executive Secretaries. To avoid that ambiguity, that is why we wanted to introduce Chief District Administrator, as his role will be confined to administration of the District. That is the explanation I would like to give Honourable Kadama as being explanation for leaving out the word District Executive Secretary. Thank you very much.

MR. KATENTA APUULI: Madam Chairperson, I thank you. Honourable Delegates in addition to what Honourable Dick Bateganya has just said. We took a long time like Honourable Bidandi Ssali informed you going through the various names and justifying why we need to use this name here and another name there. But one of the principles that I would like to bring to your notice as to why we chose certain names is how is it easy for our ordinary people to pronounce these names or to abbreviate them? That was an issue that we considered. For example, if you take the name that has been proposed now and amended by Honourable Nasasira of D.C.A.0. It will be quite a headache for my old mother to try and figure out that name as it is. Whereas C.D.A having been used to C.D. she can easily add the 'A' to the 'C.D' so that this Chief is a C.D.A. So, please when you consider names, I do not really think that it is so important as to the people. I think what is important is to the function and unless a name is obnoxious in some way. I do not think that we are in a position to come out with a name that satisfies everybody. Thank you.

AN HON DELEGATE: Madam Chairman, I would like to give information to the Chairman of Committee 4 that if it is a matter of simple terminology or titles, why don't we call him District P.S? Because he is a civil servant and he is an accounting officer, that is also simple for my mother also to say. So, to avoid I would have said even D.P.S. But there would be some confusion.

MR. KATENTA APUULI: Madam Chairman, I would like to inform Honourable Delegates that this office in the early 60s used to be held by a person called, Permanent Secretary. We tried to sell that in the Committee but somehow people did not like to go back to those old times for some sentimental reasons. So, the name 'Permanent Secretary' was not really acceptable at that time. But it is a simple name, it is a name that is known, except that then we do not want to have a confusion between the National Permanent Secretaries and the District Permanent Secretaries. But it is a simple name that we can adopt. However, we as a Committee 4, after a little consultation here, are willing to go along with Honourable Dr. Kinyata's minus the 'D' because the 'D' complicates matters for the ordinary people.

THE DEPUTY CHAIRMAN: Hon. Delegates, we have had enough. It seems there is some kind of a consensus that the word 'Chief District Administrator,' is out of place. Most of you are agreeing with Honourable Dr. Kinyatta that some many things have been floated and do not seem to be palatable with Members. The Committee is acceptable to the term, 'Chief Administrative Officer.'

(Proposal agreed to)

THE DEPUTY CHAIRMAN: So, I and 2 would read that: *"There shall be, for every district, a Chief Administrative Officer."* Therefore, I now put the Question that this does stand part of the Draft Constitution.

(Question put and agreed to)

MR. KATENTA APUULI: Madam Chairman, Clause 2, *"The Chief Administrative Officer shall be appointed by the District Service Commission and shall be the Accounting Officer for the District."* Madam Chairman, I beg to move.

MRS. KALEMA: Thank you, Madam Chairman. I would like to propose this recommendation that this Administrative Officer should be appointed by the District Service Committee. I would like to see him appointed by a higher authority, the Public Service Commission. Madam Chairman, my reasons are very clear and from experience because - *(interruption)*-

THE DEPUTY CHAIRMAN: Madam Kalema, that is a Motion, unless you are seconded.

DR. KAMANDA BATARINGAYA (Bwamba County): I second her.

MRS. KALEMA: Madam Chairman, in this Clause we are saying that this man shall be the Accounting Officer of the District. At the same time the recommendation says that he shall be appointed by the District Service Commission. It is very difficult for this man to carry out his duties honestly and effectively without much suppression from the very District Service Committee which will have appointed him. As I speak now Madam Chairman, there is already a lot of corruption due to the excessive independence of decentralisation in the districts. A certain Chairman has already allocated to himself the rest-house of the district. A number of the others have already allocated to themselves the markets and other tenders. Now this should be the man who is going to coordinate the accountability of the district to that of the Central Government. I am afraid we have made the district too independent and too powerful to the extent - *(interruption)*-

MR. KASOLE BWERERE (Buwekula County): Point of Order. Madam Chairman, is it in order for Honourable Kalema to start supporting this Chief Administrator being appointed from the Centre, when in this very Assembly she was at one time accusing a Doctor in Kiboga District who had refused to get out of the House? Force had to be used to chase him out of the House, by then we were in Kampala. Is she in order?

MRS. KALEMA: Madam Chairman, as a matter of fact the District Executive Secretary had failed to remove that D.M.O. from the house until I went to the Director of Medical Services in Entebbe and Permanent Secretary. In the end this reached the Public Service Commission, Head of Civil Service. That is when it was possible to remove this D.M.O. from the House. That is why Madam Chairman, it is difficult to allow too much power at the district which in the end they cannot easily effect because -*(interruption)*

MR. KARUHANGA ELLY (Nyabushozi County): Madam Chairman, I second the Motion moved by Honourable Rhoda Kalema in totality. Madam Chairman, I am a Member of Committee 4. But my views are that I was not able to convince my Colleagues in Committee 4 at that time. But when I presented by views, I had not even done enough research to support my view, which I am now more grateful to see that it is even being shared by Honourable Kalema. I hope at end through both our contributions, we shall have reached the hearts of those other Colleagues who were with me. Madam Chairman, I would like this Debate to focus generally on the merit of what is going to be discussed. Even when we do not support this Motion, we should hear actually the contents of what is involved in this Motion before we just dismiss it.

Now, on my part this is what I felt. After a thorough search of my heart, as a citizen of this country, I found that we have distributed power to the districts which is a wonderful thing, and we have done it beautifully as I want. I think it is a major, major administrative and political step forward in our country. Maybe Uganda will become the laboratory for the rest of Africa to come here. But I would like to have a link, a rope of uniformity in the administration in the country. On the aspect of the uniformity, at the level of appointment. When you are sitting the examination whether it be written or oral, the standard you meet must be the same UNEB standard that all Ugandan children who are in the

decentralised districts still must face to be able to move to the next step in the educational career. In that level of the needful uniformity at standards for keeping our administrations strong in the decentralised levels. I appeal to this House, to find one body which we have already created.The Public Service Commission which is going to be full of eminent well proven citizens drawn from the entire spectrum of our country to be part and parcel of strengthening decentralisation. The alternative of leaving these examinations to whom it may concern. To our Friends in the various districts, committees appointed by District Councils. Imagine what we are going to have for decentralisation which we want so much!

Secondly, imagine the scenario of how easy it is, Madam Chairman, for the other district officials in the area of people of influence or people who matter. How easy it is to collaborate with one individual who is now holding this money, authority and how easy it is to compromise him. Especially when they know that they can hire and fire. Madam Chairman, there is a problem of compromise. The fear of compromising. It is very easy this person to be compromised at that local level. This is from my heart. We must make it easy and at the same time difficult to remove these people. When they take on a job of this magnitude they want to enjoy some kind of security of tenure. These are human beings. They are being given tremendous responsibility. They want to enjoy security of tenure. Today as we stand here, what examples can we look at? We have seen that the D.E.Ss who exist today are afterall easily removable. We saw this happening in Kamuli, Kitgum, Fort- Portal, Mukono. So, these are people who are not going to stand there. But once they misbehave apparently, the Public Service can do the job. How do we want to strengthen decentralisation, if we do not have the calibre of people to run it? Let them also have a career. A great D.E.S if he is so brilliant out of the 39 districts, he has an opportunity to be made a Permanent Secretary at the National level because he was at the standard. He has done his work so brilliantly. He can go on. It will be a very straight forward step. The district which he has served will be proud to have produced such a person. Now, in my view I appeal to Honourable Members that we do not have to pass this but this is what I humbly request that we do. We support Honourable Kalema's Motion. Thank you.

MR. BWAMBALE WALEMBA (Bukonzo County East): Madam Chairman, I beg to oppose this Amendment very strongly. Madam Chairman, we have already passed the principle of decentralisation. In essence decentralisation as a principle is there to bring power nearer to the people and the same time services nearer to the people. So, Madam Chairman, let the people get somebody who is going to offer them services. Let the people see the person who is holding their power be appointed by the District Service Commission.

On corruption, Madam Chairman, there is no yardstick that those appointed at local level will be more corrupt or less corrupt than those appointed at national level. Already as we talk now corruption is almost the order of the day, yet these people were appointed at national level. Madam Chairman, corruption includes, among others, nepotism. As the Chief Administrative Officer, there is every evidence that these people have been corrupt and the local people have been the ones suffering. If there is any corruption, who benefits after all? If there has been embezzling of the money, they have been taking this money to their home districts. Now, should this officer become corrupt, let him be corrupt and then develop his district, not taking the money away.

Madam Chairman, another reason why I oppose the Motion is that after all we have got IGG to curb corruption. So, I do not see why we should use that as an excuse. Madam Chairman, these people have been used by the Central Government to carry out very, very important functions such as returning officers and this person can even rig elections which will be detrimental to the people of that very district. Sometimes they even offer tenders to the people from their original districts. Madam Chairman, should this person become a non-performer, it will be very difficult to remove him because they belong to the Centre. Therefore, I strongly oppose the Motion. *(Applause)*

MR. KAVUMA STEPHEN (Kyadondo South): Madam Chairman, is the Honourable Member in order to argue as if this Assembly has not taken into account what mischief can happen from officials from the centre who are totally left on their own? When in fact we have already passed a provision which is on page 5 of the Report and it is on Paragraph (g), which says: *"The Local Government shall oversee the performance of persons*

employed by the Central Government to provide services in the areas and to monitor the provision of the Central Government Services or the implementation of projects in their areas." Is the Honourable Member in order to argue?

THE DEPUTY CHAIRMAN: Hon. Bwambale you are being reminded that some of your provisions have been catered for.

MR. CHEBET MAIKUT (Kween County): Madam Chairman, I would like to add my voice to those Honourable Members who oppose the Motion moved by Honourable Kalema. Madam Chairman, are we really honest in ourselves when we come here and support such a Motion. I remember that only the other day, when we were discussing the question of federalism one of the main arguments of the Honourable Delegates here, and I believe the people of Uganda, was to give power down to the districts. Now, having agreed in principle that the power should go right to the people are we now trying to say that we are giving our people air. Are supplying air to our people, Madam Chairman?

MRS. KALEMA: Madam Chairman, is the member on the Floor in order to confuse political powers and administrative powers? My Amendment is concerned with administrative powers from the Central Government to the District. In any case that district is a much lower level for the political power.

THE DEPUTY CHAIRMAN: Hon. Kalema, by merging the executive powers of the district Chairman with the political powers, you have marked them. So, what is your point?

MR. CHEBET MAIKUT: Thank you, Madam Chairman. First of all I want to bring the attention of Honourable Members that I have happened to have some kind of experience in this particular matter in as far as District Councils the running of Local Government are concerned. Some Honourable Members have pointed out that under the present system as it is now there have been many cries that the real people, down at the district level have not enjoyed that kind of autonomy that we wish them to have. Therefore, this is the only opportunity that we should give the people of Uganda their right to destiny at their own level. When we were discussing Chapter 12 on Public Service, Madam Chairman, I remember there was a Provision that gave an opportunity for the coordination of the Public Service in various districts of the country. I believe that in my view will take care of such areas as the standards. If we would like to have set of standards for example, for District Executive Secretaries or for appointment of Members of District Service Commission. I believe this is already taken care of and this one will definitely lead us to the question of having a certain set of conformity throughout the country with the kind of coordination.

We have a saying, Madam Chairman, that if one was to marry then your parents will be the ones to choose a wife for the young man who is ready to marry. What was the consequence of that kind of forced marriage? The consequence was that most marriages did not last for long. Likewise, I would like to suggest that we should allow the districts if we have given them the power to choose that kind of man or woman with the ability to perform to the satisfaction of Members of that district. If you get somebody who has got the umbilical cord is in one way at the centre, then definitely we shall have been rejected in various districts simply because maybe they have not performed to the best interest of their districts. So, for those few reasons, Madam Chairman, I strongly oppose the Motion moved by Honourable Kalema and plead that we give our people the power which we have so far been cherishing. Thank you, Madam Chairman.

MRS. HOPE MWESIGYE (Women - Kabale): Thank you, Madam Chairman. I beg to support the Motion by Honourable Kalema. Madam Chairman, in my opinion I do not think that decentralisation means severing the relationship between the Centre and the Districts. I think we must get this clear. Decentralisation means devolution of powers and devolution of powers is a process. We cannot all of a sudden cut all the power from the Central Government and leave it with the districts. In fact if that was the case we would have supported *federo.* But the fact that we are supporting Decentralisation which is the process of devolution of power, means that power must go slowly to the people. We are experimenting this. Madam Chairman, I think we must maintain the linkage between the Centre and the districts. It is like cutting the umbilical cord of a child inside the womb of the mother, if we did it like this. Madam Chairman, because of the need to have the linkage between the

centre and the districts for purposes of monitoring *-(interjection)* Madam Chairman, in decentralisation we must realise that there is the need to maintain that linkage. Why do we only want to take advantage without even looking at how that advantage could be protected? Some Members have raised the issue of corruption. In my opinion corruption is not an issue that because someone has come from Public Service that person will be corrupt. Any person can be corrupt at any level and in fact experience has shown from the District Councils that there is also rampant corruption. Madam Chairman, in fact what Members are forgetting is that decentralisation goes with decentralisation of corruption. So that one has no basis of arguing that someone who comes from Public Service Commission will be more corrupt than someone who is recruited at that level. Madam Chairman, corruption is a crime and we know that there Laws in place that combat crime. We have already passed provisions establishing an independent office of the IGG. So, we have mechanisms in place already to look at those people who are corrupt whether they are recruited at local level or at the higher level. Madam Chairman, because of this linkage which we must maintain between the Centre and districts and because of the fact that the process of devolution has just started I think there is need to maintain that linkage. Therefore, I support that this officer should be recruited by the Public Service Commission. I thank you very much.

MRS. MWONDHA FAITH (Women- Jinja): Madam Chairman, I am standing to supplement what Honourable Mwesigye has said in support of the amendment of Honourable Rhoda Kalema.

Madam Chairman, just to refresh the Delegate's mind, we have to bear in mind that it was in this very august House that we passed Article 201 Clause 2 which says: *"The following principles shall apply to the Local Government System. The System shall be such as to ensure that functions, powers and responsibilities are devolved and transferred from the Central Government to Local Government Units in a coordinated manner."* Madam Chairman, it appears from the Delegates who are not supporting the appointment of this Chief District Administrative Office. It seems to imply that the provision we passed was to ensure giving power per se to the districts. But there is devolution and transfer. If you meant to give the districts power, then the word 'devolution' would not have been included in the Article.Or in the Clause which we have already passed, saying that we do not want devolution of power which was said to be actually the process of transferring power from the Central Government to the local governments. Then we defeat ourselves and there is no way one can tell me that we are giving people power, power in air when we are saying that they should not appoint this Chief Administrative Officer. So, Madam Chairperson, I beg to caution Members that while deliberating on this, and purporting to give the local governments powers without devolution, will be a contradiction both in principle and in terms.

DR. HIGIRO SEMAJEGE (Lwemiyaga County): Madam Chairman, I am standing to support the Motion. I am adding some two points. It is that although we have got powers in the districts, we also must maintain the attitude of being Ugandans as one country. One, must have some linkages which are strong.

Two, some districts as you may know, have not been so well developed both in education and socially. They may not have enough stock from where to draw enough experience, educated people to hold this very important responsibility. Madam Chairman, *-(interruption)-*

MR. GAWERA: Madam Chairman, is my Colleague, Dr. Semajege in order to state up favourably especially as far as Mukono District is concerned, that Mukono District has labour resources, that Mukono has no qualified people. Therefore, it may be drawn not being capable of *-(interruption)*

THE DEPUTY CHAIRMAN: The Member is in order because he said, 'may' he did not say 'does not.' Therefore, he is in order.

DR. SEMAJEGE HIGIRO: Madam Chairman, I thank you. In this case the people will be drawn from all over Uganda. You might find that people from a Constituency, will draw from Mukono, because for us we know we have got educated people but we may not have enough. What I want to say, Madam Chairman, is that with this kind of localisation it is possible to have some form of local nationalism. So that you will be appointing some people of lower qualification just because you are saying you want your person and so on. Madam Chairman, another factor which is very important

is that once you are appointed on that level, you should be transferable. If a person has been working in Masaka it should be possible to be transferred to another district in Uganda. There we keep Uganda together. Therefore, for that reason, Madam Chairman, the Public Service Commission would do a better job for these districts than just making them very local. I support this Motion.

THE DEPUTY CHAIRMAN: Honourable Delegates, it is already 1.00 p.m. We stand adjourned until 2.30 p.m in the afternoon.

(The Assembly adjourned and resumed at 2.30 p.m)

MR. ADYEBO COSMAS (Kwania County): Thank you, Madam Chairman.

THE DEPUTY CHAIRMAN: Just a minute, Honourable Adyebo, because I can see some people complaining. When I adjourned I stopped this way and I start that way. I am coming to this side. So Honourable Adyebo, continue.

MR. ADYEBO: Thank you very much, Madam Chairperson. Madam Chairperson, I vehemently oppose this amendment by my Colleague, Honourable Rhoda Kalema. I am opposing this amendment because, Madam Chairperson, I will first of all ask, what are we talking about here? Are we talking about unitarism or are we talking about decentralisation in principle? If we are to heed to the principles of decentralisation then we must be talking about devolution of power and functions as well as responsibility. Madam Chairperson, we must accept, since we have accepted decentralisation as the principle of management we are going to apply, to subsequently agree to transfer power, responsibilities, away from the centre to the local authorities. In this way we shall be seen to be doing what we say. Honourable Members argued this morning and this afternoon that we need to adhere to the linkage between the centre and the Central Government. I do agree. Honourable Elly Karuhanga talked about the security of tenure of these officials who are going to operate, to lead the local government. I do agree but, Madam Chairperson, what is important is to ensure that there will be substantial allegiance of these officials who are going to work with the local authorities. You can only get allegiance or you can be assured of allegiance when you are assured of the appointing authority. Allegiance normally goes hand in hand with the appointing authority. If you are going to have an appointing authority In the centre, you are going to actually encourage divided loyalty of these officials who will operate with the local government and that will be a problem. It is in this respect Madam Chairperson that I am encouraging that this very crucial official who is going to be the Accounting Officer in the district be appointed by the district authorities. So that he or she will have allegiance to the district in order to perform. Madam Chairperson, if we are going to encourage this officer to be appointed from the centre I am also afraid that he or she may be misused.Or may be used to be a continuous conduit of the same game of embezzlement we are talking about or corruption we are talking about or even theft of funds. Madam Chairperson, the longer the distance between the centre and the local authorities the bigger the probability of this corruption, theft and embezzlement. I am talking from experience and please do not ask me to tell you the details. I am of the opinion, Madam Chairperson, that the districts be allowed to appoint this person but if need be the district can use the expertise and cooperation of the Public Service. They can invite officials from the Public Service Commission to go and participate in the exercise of appointing these officials or interview within the district, there is no problem. Here I have no problem at all and that will be the kind of linkage with the central which Honourable Karuhanga was talking about this afternoon, Madam Chairperson. In conclusion, let the Chief Administrative Officer be appointed by the district to ensure loyalty so that with the loyalty the person will perform, knowing that it is the district first and foremost. It will be in line of our principle of decentralisation where we have to evolve, where we have to transfer substantial power and responsibility to the local authorities. I thank you, Madam Chairperson. That is why I am opposing the amendment very vehemently. I am opposing it and I am calling upon my colleagues to support me and throw out the amendment. I thank you.

MR. KATONGOLE: Thank you very much, Madam Chairperson. Madam Chairperson, I would like to strongly oppose this Motion. Madam Chairperson, I am really surprised and I am a little amazed especially when I hear some of the Delegates here who should be helping us to understand the concept of decentralisation are misleading us on this Motion. I think, Madam Chairperson, allow me to labour a bit on this concept of decentralisation

because this is where the problem is. Madam Chairperson, when we talk of decentralisation we are really talking of three different types of decentralisation. One, Delegation. And delegation here meaning that we are only delegating the functions and powers, at a particular time we can pull back these functions and powers. That is delegation. Is this what we want that we should delegate functions and powers and at a particular time we pull back this? Now, the concentration means really giving people functions without authorising them to have power. Is this the type of decentralisation we are talking about? I do not think so. The third type of decentralisation is devolution which really means giving people functions and power. And I would imagine that this is what we want. So I get amazed when some of us really say that we should give people functions but we should deny them of powers. I think this will be cheating. We shall be doing injustice to our people.If we accept this Motion we are not doing justice for our nation. Madam Chairperson, the districts have been empowered to appoint all heads of department like, the District Veterinary Officer, the Agricultural Officer, the Education Officer. Now, if we have empowered the district to appoint all these heads of department why are we saying that their boss should be appointed by a different body? I think that is injustice also. In order to keep consistency, the boss of these heads of department should be appointed by the same body. Madam Chairperson, in my view I think we shall be creating a lacuna between the administrative structure of the district. I will talk from experience, Madam I am glad that Honourable Karuhanga this morning really enumerated districts and my district was one of those he mentioned. Some of the reasons why we are having problems with these DESs is that they always say they are not accountable to us. Madam Chairperson, I have been a member of the executive on RC.5 level in Kamuli District for the last nine years. These are some of the problems we are finding on the ground. They say they are not accountable to us. These are officers who receive even cheques from their Ministries and they do not even bother to tell us. When you try to find out why he is going ahead to spend some money without us knowing he says I am not accountable to you.There is nothing difficult, there is nothing impracticable like really trying to monitor, to control an officer over whom you do not have power. So we shall be doing injustice really to say that the boss of the heads of department should be appointed by the Central Government and then the heads are appointed by the district service committee. Madam Chairperson, therefore, on this ground I would vehemently oppose the Motion raised by Honourable Rhoda Kalema. Thank you very much.

LT. COL. KIIZA BESIGYE (NRA Delegate): Thank you, Madam Chairperson. I have been listening attentively to the Movers of the Motion on the Floor and those who have supported it so far. I must say that I am certainly not satisfied with the reasons they are advancing. We are talking about decentralisation and if we are sincere with ourselves we should realise that there cannot be any meaningful decentralisation of any description if we supported the Motion on the Floor. Madam Chairperson what is being suggested is similar to what we rejected whereby you would have the President as the Chief Executive and political head of the country. You would have a Public Service Authority which is independent, appointing people to work with him.So that these people are responsible to the Public Service Commission which the President does not control in the implementation of his own programmes. I think this is the surest way to maintain a unitary system and to cripple the local administrations we are creating. Madam Chairperson, of course, arguments have been advanced that there are no qualified people in the districts. This is going to enhance tribalism, but my experience is not so. May be in the short run there may be some areas which may be inward looking.Like Honourable Walemba said that even if the man is stealing he will develop his area. Meaning that they will appoint the man from their area but at the end of the day, because with these resources, the development of the people who are close to that authority is at stake. Definitely reason will prevail that they must get somebody who is efficient and it has happened before. In my own district I have seen it where we had in my town council people from my own village appointed, but they squandered the resources of the council. Until we got somebody from Kasese actually, somebody called Bwambale and the development we have in my town was left by that Bwambale. As soon as we get the authority we shall go and look for him wherever he is. Or if we cannot get him we shall get somebody like him. Therefore, with experience this inward looking tendency of people appointing people from their own districts will end and people will advertise and look out for efficiency. We should not be confused with the short term difficulties that this policy may create.

Secondly, the question of uniformity of standards, this one can be taken care of spelling out, if you want, the standards of people who can be recruited to the post of that level. Creating standards is like schools, you can have private schools, you can have all sorts of schools, you only set standards. Therefore, I do not think that you need to have a public service somewhere appointing in order to have uniformity of standard. And the security of tenure, of course, is also not compromised at all because the terms and conditions of service are going to be spelt out by Parliament as you realise in the provisions that are being made. Terms and conditions of service will be spelt out by Parliament. In any case, it is in the interest of the district service itself to make sure that its employees have a security of tenure. That is the only way they can derive the best out of them. Therefore, I think that we should not be bogged down by these small difficulties that may be encountered. We also ought to note that the District Service Committee is created with the approval of the Public Service Commission. We should not consider that the District Service Commission is some kind of crazy organ which is created locally without some kind of censuring in terms of competence. Therefore, if the Public Service Commission wants to impose any kind of influence in the district, let them make sure that the members of the District Service Commission they approve, are competent people. Then subsequently leave them to appoint using that competence which has already been approved. Therefore I do not see why we should worry that the district service committee is going to be a narrow minded group of incompetent people when it is approved by the Public Service Commission. On the question of linkage between the central government and the local administration which is a point that has been raised significantly, I wish members to realise that this is taken care of by a different provision. You will realise that provisions of Article 220 which is now proposed as 223 provides for a resident District Commissioner. This Resident District Commissioner will be an officer of the Central Government. Resident in the district precisely to offer that linkage in terms of local government and Central Government functions. Secondly, if there is any difficulty in any district which surpasses the ordinary solution of problems that are created within these provisions, the provision of 219 or now proposed as 222 give power to the President to take over the district. So if there was any unexpected crisis within any district there are still residual powers which have been left with the President actually to take over the local administration, from the centre. Therefore, if we really are serious about decentralisation and indeed as some Members are saying we do not want to deliver simply air to these districts that they are being decentralised. I think we should oppose this Motion and let the districts hold their destiny in their own hands. I thank you, Madam Chairperson.

MR. HASHAKA JACKSON (Kibale County): Thank you, Madam Chairperson. I stand to oppose the Motion. Madam Chairperson, the appointment of this officer should be done by those who have been given powers. Madam Chairperson, we are trying to have a new phenomenon of developing decentralisation by giving powers to the people. Now, we give powers to the people by the right hand and we take it away by the left hand. Madam Chairperson, there are some Delegates who have had a fear that these people will connive with the person they have appointed and embezzle money. I want to give a scenario. What if this man was to come from the Public Service and we have all along been saying that the Public Servants have been embezzling money. This man could have been in one of the rackets embezzling money and this man instead builds up a more syphoning hand with the secretaries or the heads of department in this district. And at the same time, Madam Chairperson, we are going to provide for auditors, that the books of account of the district will be audited. At the same time people who have elected their representative and they form a commission which has elected this Chief Administrator. I really do not see how they cannot discipline this person. In fact they have the powers to discipline this person much more than if this man had been imposed on them by the Public Service. So they have the powers. I do not see how we are saying that we are giving power to the people and at the same time you are giving them piecemeal. They should have the authority to hire and fire this man they have appointed as their chief. Madam Chairperson, this Chief Administrator will be directly accountable to the people. I do not see how this man can have double standards to account for the district and at the same time also account for the appointing authority, the Public Service. Therefore, Madam Chairperson, on the point of having given powers to the people through the decentralisation. Honourable Katongole Tirusasira had clearly said that if we have to delegate as part of decentralisation, we have to del-

egate the powers. The peoples' powers, to the Chief Administrator they have appointed. Therefore, Madam Chairperson, I beg Honourable Delegates that we should not give power to the people by the right hand and be seen by taking it away by the left hand. After all, people will be using this excuse of saying that look, people have pretended to give you powers and you can imagine they are now taking it away. I would not like to have this scenario and intimidating of the people. Let them have the power completely and absolutely. Therefore, Madam Chairperson, this selfish amendment should be thrown away completely. Thank you very much.

MR. AMANYA MUSHEGA (Igara County East): Thank you, Madam Chairman. I also oppose the amendment. We have already resolved to give the power to the people and I see power in three dimensions. Political, economic and administrative power. If you give people political power and you do not give them the administrative capacity to put their decisions into effect, you are in a way giving them *byoya bya nswa.* Secondly, Madam Chairman, just a week ago we had a very strong debate and all sides were agreed on one thing, taking power from the centre. The Federalists wanted power away from the centre but via the region to the district. The Centralists to which group I belong wanted power away from the centre and direct to the district. So we are all agreed actually in taking power away from the centre. Where we disagreed is where it should really pass. Now, I will be surprised to see people who were strongly for decentralisation and who were strongly for federal now arguing that the power should stay at the centre because the districts have no capacity to manage them. Thirdly, Madam Chairperson, we should not underrate the population. There are people arguing that they are not capable of learning from their mistakes. This was the same colonial argument when we were arguing for power being decentralised from the colonial office in London to different protectorates and colonies as independent states. Strong colonial lobby was arguing that Ugandans had no capacity to run their own affairs and we have proved them wrong. We have made some mistakes there is no doubt but we have learnt from those mistakes as it was the case when we were passing the amendment we did last Tuesday. It is a clear sign of maturity of our people even including those who were alive at the time of the Lancaster Conference. My view is that we can learn things by doing things and not by somebody else doing them for you. When you see children as they grow you try to feed the child, the child will refuse and will want to feed itself. It starts by putting the food in the nose, in the eyes but eventually direct the food into the mouth. It would be wrong to treat the districts worse than we treat our children. Even the disabled whom they used to call handicapped have refused to be handicapped. They do things themselves, they even go for Olympic Games. Now, who are we to say that these people have no capacity to manage their own affairs? Madam Chairman, one of the causes of corruption and inefficiency is over-centralisation of power. Political, economic and administrative power. The nearer you bring these three issues nearer to the population who are always working, the better. Because if somebody locked up in Crested Tours how will the people in Kitgum or the people in Bundibugyo or the people in Kisoro ever know what takes place in that area? I am sure even the Honourable Members of this august Assembly have problems penetrating those centres. So we should really bring these issues nearer to the people because they are the most interested people or centre when things go wrong. We need many centres of economic, political and administrative activity with the coordinating centre.I think we are going to pass under the Public Service and later on in this recommendation that these district committees are appointed by the District Councils with the approval of the Central Public Commission. Which means these nice people at the centre, if they approve that the people at the district are also nice, there is no way they will go to chose wrong people. They themselves will be good. If a district is weak and people are arguing that some districts have no capacity in terms of manpower and resources. But if a district is weak in terms of manpower it will itself shop elsewhere for good people rather than the centre imposing on what it considers good people on it. I would like to see the people of Bushenyi, I am from Igara East which is in Bushenyi making a mistake by employing a Munyankole thief. If he steals their money tomorrow they will go to Lango to look for an honest man but if you impose this person on them they will never learn how to blame themselves. They will consistently blame the centre for the mistake the centre should not have put itself in. In actual fact in my vernacular there is a saying that *do not tie the ears of a goat on my head so that the leopard eats me for nothing.* So remove the ears of a goat from

your head and you will have no problem with the leopard. But now you are trying to put the ears of a goat on these people of ours and cause problems ourselves. Madam Chairman, the districts may initially make mistakes. I believe people who make mistakes are those who do nothing, if you are lying down you will never fall but the moment you begin to walk there is a chance of knocking a stone but you do not stop a journey. So if we allow the district, initially for example, when the Rcs were introduced in the mid 80s the initial Rcs were elected largely on sectarian lines. There will be NRM but DP under cover and you remember at that time the papers, the Citizen, the People. They used to claim that 80 per cent of the Rcs are ours. I no longer see them making this claim because the population has slowly through this democratic process learnt how to chose people who can perform. Even we distinguished delegates of this Assembly I am sure we are better off now than we were a year ago when we first assembled here. We have been able to be better because we were democratically elected, we were able to learn from our mistakes. We now greet each other even after a disagreement in debate. But a year ago, Madam Chairperson, you may recall greetings were very uncommon. But we have learnt from our mistakes and we are doing better. If we can learn from our mistakes why do we think the people in the district can not? This Constitution to me is about, as I said the other day, about sharing responsibilities, sharing powers and sharing resources. Why are we denying the districts to participate in sharing in giving responsibility? Madam Chairperson, the argument that there may be no people at the districts really I find this abusive. We people at the centre, all of us, I do not know any of these people here who has emerged from the planet Mars. We are all from village 'X,' we all ultimately belong to RC One. We are products of the villages and the districts. I do not believe and I will need to be convinced that districts have enough stock to furnish the centre and no less and no more for the district. That every good person they have has gone for the district. They have not had a shortage or a surplus. If the districts can produce good people for the central Public Service Commission. If they can produce good people for forming the Central Cabinet, if they can produce good people for forming the Central Constituent Assembly. Are we trying to argue that really we are the only good people from these villages? They have nothing left to run the districts as efficiently as we do here? And if we can bring good advice to the centre, of our way to the villages, can't we rub off some of this goodness to the districts? Don't they listen? Are they empty headed? So we should skip this holier-than-thou way of thinking that once villages have produced us to come to the centre, they have no more sons and daughters who remain behind even to do better than ourselves. Those of us who go home for regular consultations, you have seen how the peasants are consistently asking us how deliberations of the Constituent Assembly are going on in national interest. Whenever we pass a Motion here in the interest of Uganda remaining together the population is excited. You saw this even in Kampala here under the recent resolution we passed to make Uganda one and really very efficient. Finally, when you impose these people, from my experience, I have been in some public service and I go to the districts including those which are not where I am born. One of the constant complaints in the districts is that the centre has been saddling these districts with people they do not know, with people the districts find impossible to utilise. This is a constant complaint all over the country. We who have the opportunity to hover around the country you could get our experience without having to spend a penny on that. Yet when they have a wrong District Chairman, RC.3 Chairman, they have been removing them and replacing them with better people and that is why we have been fighting for the right of recall. We recently passed a Right of Recall in this Assembly. Now, if the villagers know how to recall a bad Member of Parliament, how can they fail to recall a bad District Chief Civil Servant? I find this odd. If they are able to demonstrate against bad CGR why can't they be able to distinguish a bad civil servant. So we should stop. If the districts begin to chose their own servants then they will no longer pass on the blame when things go wrong. It is the Minister 'X,' it is the Permanent Secretary 'X,' who is causing problems to our district. Again we have a saying in my vernacular that when you are a poor cultivator, a bad farmer, you do not know how to remove *Lumbugu*, when the neighbour's garden is flourishing with beans and your beans are being stifled by the *Lumbugu* you say that you have been bewitched by the neighbour with *Lumbugu*. So the districts will know, learning from their neighbours, that when you perform badly *Lumbugu* will overwhelm your crops in administration. You learn it from your neighbour and do well. My ancestors formulated this saying which has been helping me a great deal although I was not there when they did it. Then they will also be able to take

responsibility for their decisions and stop blaming the centre for their problems always. Now whenever you go around the districts, even when a classroom has no door they will say what is the Minister doing. When a local bridge is not there they say the Minister of Works yet when they have been given responsibilities. I am sure, they will handle them adequately because the most proud person I meet in the countryside is the Chairman of RC.I. The Chairman, RC.1 is the most effective and proud person in the country-side because they have the power and they are the nearest to the people. So with these many reasons Madam Chairman, I oppose this decision. Especially when it is moved by my good friend and aunt, Honourable Rhoda Kalema with whom I have a lot of respect and who is a strong believer in taking away power from the centre. Let us take away power from the centre and if it has not landed at Mbarara or Fort Portal Region, please let it go on to Bundibugyo. Let us not carry it back to Kampala and saddle the centre with impossible responsibilities. Finally, we seem to think that Uganda will remain a third world banana republic. With this Constitution which is going to bring peace in the whole country-side, there will be heavy economic activities. The moment there is a lot of heavy economic activity there will be a lot of resources and administrative decisions to be made. So this Constitution is not for tomorrow. Shall we come back to amend the Constitution whenever the districts improve in resources? No. We empower them right from the beginning as resources improve the capacity to manage them is already in place. I oppose over centralising the centre and support empowering the districts. Thank you very much.

THE DEPUTY CHAIRMAN: Honourable Delegates, it seems my random sampling is giving biased results. So now I want to call upon those people who are supporting the Motion.

MR. MULONGO SIMON (Bubulo County East): Thank you, Madam Chairperson. Madam Chairperson, I think we are confusing some issues. I know very well Members are talking in support of decentralisation which most of us support here but forgetting the fact that we are talking of decentralisation in a unitary system. Even if in a number of institutions, powers will be decentralised. The Central Government has still to be linked directly, administrative or otherwise to the local authorities. Madam Chairperson we have - *(interruption)*

MR. KADAMA: Point of order. Madam Chairperson, I am being advised by my neighbours that I am new here I might not know the rules. When we were reading Chapter Two, I was new here but I was told that the word 'unitary' was removed. So, is the Honourable Member in order to say decentralisation in these circumstances is under unitary system?

THE DEPUTY CHAIRMAN: Thank you for having drawn his attention to some alternative definitions of particular scenarios. He has taken note.

MR. MULONGO: Thank you Madam Chairperson. I think the new Member still needs a lot of education on how we have decentralised and what has not been decentralised. The relationship between the centre and the local governments. My argument here will simply be in terms of what some Members on the other side have put down as strong points against the Motion. First of all, people have been talking of benefitting from the diversity of human resources even outside the districts. Honourable Kiiza Besigye did quote an example of a Mr. Walemba if I am correct who worked so hard for Rukungiri. This itself defeats the fact that you cannot rely entirely on the district in terms of drawing human resources for the development of that area. The principle that you can draw from within and outside the district can still augur well with leaving that essential duty with the national institution other than the local institution. Madam Chairperson - *(Interruption)*- I should continue, Madam Chairperson. Honourable Amanya Mushega has been saying that if we allow the centre to impose,though that is a very harsh a term, such an officer to the district it will be underrating the population.But I think, we shall be strengthening, we shall be assisting the local population from the weaknesses of the district service commission. We have seen currently that already with the current test of decentralisation the districts and other lower officials have not performed to the expectations of the population. There is no way we can say that because Uganda is developing, therefore, very immediately people will crawl out of such weaknesses. This will have to continue, even in Britain, even in America the Federal Government still comes in to assist the local states. So this cannot just be overhauled over-night. So, Madam Chairperson, I think the capacity to manage the districts own resources has to be controlled from the centre

particularly from this point of view of this office we are talking about. Madam Chairperson, we should not equate political appointments with professional appointments. This person here is going to work in the capacity of a professional not just political. The politics of the local area will be in the hands of the local councils to the district. They will be having supervisory powers and even to report upon such a person. We think we should have a neutral person, a professional, who will not be biased in any way in his or her office. I think this is what is very important. So Madam Chairperson, may be just to wind up, I know very many people have resisted this but I do not think in my opinion we are trying to disempower the people contrary to decentralization principle. We are saying that, unlike other offices this specific office should be controlled by the centre and we leave only supervisory and other related tasks to the district council.

THE DEPUTY CHAIRMAN: Honourable delegates, we have heard at least a contrary view supporting the Motion, but I have a request here from the chairman of the committee they have agreed with Hon. Kalema to make an amendment. So I call upon Honourable Katenta Apuli *(Interjections)* Honourable delegates, order Honourable delegates it is admissible for somebody to improve on an amendment. What is so abnormal about making an amendment to improve on Honourable Kalema's Motion, if you do not was it than you will throw it out but you give him a voice.

MR. KATENTA APUULI: Madam Chairperson, during our lunch break I did try to discuss with Hon.Kalema. At that time she seemed to appreciate that if we left this provision as it is as reported by the committee she would be willing to go along with that arrangement provided that the district service commission, the district advertises. The district service commission interviews and short lists and then sends -*(Interjections)*- apparently Madam Chairperson, the committee is not very happy about I think the people are in the mood, the House is in the mood to defeat this Motion.

THE DEPUTY CHAIRMAN: Okay, with that, I want to put the question. I now put the question.

(Question put and negatived)

THE DEPUTY CHAIRMAN: So we go back the Clause (2) as proposed by the committee- Okay, we are going back to (2) as it was there is an amendment being proposed.

DR. KINYATA: Madam Chairperson, I wish to introduce a minor amendment to include that the Chief Administrative Officer will also be the head of the civil service in the district.

THE DEPUTY CHAIRMAN: Honourable Kinyata, but there is, and shall be the accounting officer for the district. So what is the problem? Accountability in broad term is not in accounts.

MR. AMANYA MUSHEGA: Thank you Madam Chairperson. I wanted to move an amendment by placing the word "Chief" between the words -

THE DEPUTY CHAIRMAN: Honourable Kinyata still has an amendment on the Floor-

MR. AMANYA MUSHEGA: I thought you had asked me to -

THE DEPUTY CHAIRMAN: No it was a question whether to him there is a different between accountability in broad terms and accounts in specific terms.

DR. KINYATA: Madam Chairperson, what I wanted to know is the clarification whether the accounting officer means the head of the civil service.

MR. KATENTA APUULI: Madam Chairperson, the assumption was that this was the principle civil servant in the district, he is the most senior person in as far as civil servants are concerned. So the committee was under assumption that he would be the head of the civil service. I do not know whether it is necessary to spell that out in the constitution. Can't that be given in the functions of the Parliament?

THE DEPUTY CHAIRMAN: I think Honourable Kinyata that is not called for.

MR. AMANYA MUSHEGA: With your permission, Madam Chairperson, I wanted to move an amendment by placing the word 'chief' between 'the' and 'accounting' so that it reads, 'and shall be the Chief account officer of the district.' The reason I am moving this is that if you say is the accounting officer, and the resources improve, it does not leave

room for having more than one accounting officer for various departments. But having somebody being the over all chief, that is the purpose of this amendment. Thank you.

THE DEPUTY CHAIRMAN: I think we are all agreeable, so let us get the position where we are. We are saying that (2) would read: *"The Chief Administrative officer shall be appointed by the district service commission and shall be the chief accounting officer for the district."* And I say that this stands part of this constitution.

(Question put and agreed to)

MR. KATENTA APUULI: Clause (3) *"Parliament shall by law establish the functions and terms and conditions of service of the chief administrative officer of the district."* Madam Chairperson, I beg to move.

MR. KITARIKO: Thank you Madam Chairperson. I believe that Clause (3) should read: *"Parliament shall by law establish qualifications, functions and terms of service of the chief district administrator."* That becomes full.

THE DEPUTY CHAIRMAN: Okay, let us have it again, Honourable Kitariko.

MR. KITARIKO: Madam Chairperson, I merely include the word 'qualifications' after the 'law establish,' so that you have got qualifications,functions, and terms and conditions of service of that person, it becomes full.

THE DEPUTY CHAIRMAN: Anybody opposing it?

HONOURABLE DELEGATES: No.

THE DEPUTY CHAIRMAN: Okay, now we know Honourable Kitariko's Motion has been accepted by all of us that we include the word 'qualifications.' Now I go to Honourable Nasasira.

MR. NASASIRA: Thank you Madam Chairperson. Mine is a clarification from the chairman of committee (4) in respect to this Clause (3) that we are debating. When you look at page 36 of the committee's report article (4) the committee put in a new Clause which reads as follows: *"In the performance of his functions, a district service commission and the local government staff shall conform to the service, terms and conditions and the standards established by the public service commission for the public service generally."* I wanted to get a clarification as to whether this chief administrative officer of the district is not seen as a local service staff, and therefore, catered for by the public service commission. If that is the case I am wondering whether Clause (3) is necessary at all that Parliament should go ahead to set out his own conditions and terms of employment.

MR. KATENTA APUULI: Madam Chairperson, we introduced Clause (4) of Article 224 to make sure that all servants of the local administration conform to a particular standard. This standard would be set by the public service commission so that there is some uniformity in the whole country. However, the issue of qualifications functions and terms of condition, this has been appearing now and again where we have named specific offices. I do not really think that it is in contradiction with the other, or if it appears redundant then may be delegates can pronounce themselves about that. But it has been done somewhere else so that is why we did it here also in respect of this particular office. The other item the Honourable Member has alluded to is to standardise all civil servants in the district to conform with the nation so that there is uniformity all over the country. I do not know whether I have satisfied the Honourable delegates.

PROF. NABUDERE: No, you have not.

MR. NASASIRA: Madam Chairperson, I think the chairman of the committee has not satisfied me because I do not see why we have two institutions working out the conditions and terms of the same class of employees.

MR. KARUHANGA: Madam Chairperson, I thank Honourable Nasasira for giving way. Following the long time we have spent on this article today, it now becomes obvious to me that it is even irrelevant to make a law for the terms and conditions of this officer. The terms and conditions of the chief administrators of the district will be very strange law because defining whether you will have a car or whether you will have fuel. I think this is covered where Honourable Nasasira has pointed out. Since we have said that those people should appoint their person, they should go ahead and provide the terms. I do not see what we are doing

with the central power anymore. Because you can't have your cake and eat it at the sometime. You can't say you want Parliament to do the terms then the appoint to local government if you had accepted the other amendment, then this would be reasonable.

MR. RINGWEGI SAM (Padyere County): Thank you, Madam Chairperson. I am surprised that Honourable Karuhanga is finding this provision strange. I am also disturbed about why he should find it strange. Here we are trying to provide for some residual powers in Parliament to try and prescribe functions, terms and conditions of service. There is also an amendment by Hon. Kitariko to add qualification. You can see that we are not empowering Parliament to make law only for the terms and conditions of service for this chief district administrator. We are also empowering Parliament to make law which will prescribe the functions of this officer in addition to providing for the terms and conditions of service. So there is nothing strange about that. I would like Honourable Karuhanga to cast his mind back if he is talking about strange laws that even on our statute books we have a specific legislation for only one person. I would like him to cast his mind back to the Pension Act. Parliament was empowered to make an act of Parliament specifically dealing with the pension of one man. So it would not be strange for this august assembly to provide law providing for Parliament to prescribe functions, terms and conditions of service and qualifications for the chief district administrator. Madam Chairperson, however, I would like to implore the chairman of the committee to agree to the substitution of the word 'establish' with the word 'prescribe.' So that the clause should now read: *"Parliament shall by law prescribe the functions,"* and not 'establish.' When you are making any legislation setting out the functions of a particular office you do not establish the functions but you prescribe them. So I would like the chairman of the committee to agree that the word 'establish' be substituted with the word 'prescribe.'

MR. KATENTA APUULI: Madam Chairperson, that issue of prescribe had also been drawn to my attention by another delegate so I accept that. Now, I am a little bit wiser Honourable Madam Chairperson to inform Honourable Nasasira. I think he took me off guard when he did last time and I apologise. Honourable Nasasira, when we had done with this Chapter Thirteen, there will be a number of changes that will have introduced in this Constitution,that will require the Local Government Statute of 1993 to be amended. It is at that time that all these things by law established prescribe that when considering the amendment to that Statute all these things will come out. This office we have established never originally existed as a Constitutional matter. Now that we have made it a Constitutional matter it will be taken care of under that law. It is not going to be that a specific law for the CAO will be made, it will be made under the general law that affects Local Government like the 1993 Statute on Local Government.

MR. MULENGA JOSEPH (Democratic Party): Thank you very much, Madam Chairman. Madam Chairman, I feel unsatisfied by the explanation given by the Chairman of Committee Four. My understanding of the point raised by Honourable Nasasira was that we are having two provisions regarding the authority to prescribe or establish the terms and conditions of service of these people. Is it the Public Service Commission or is it Parliament? The Honourable Chairman of Committee Four says we shall deal with that later when making a general law for Local Government. But here we are making the Constitution from which the laws to be made by Parliament will derive authority. I would have thought, Madam Chairman, that if there is already provision for the Public Service Commission to lay out or set out the terms and conditions of service of the staff of the district, we leave that function to the Public Service Commission. This clause be abridged to only provide for prescribing the qualifications and functions of the Chief District Administrator. That is a point that I thought he would readily accept. Definitely we have established that this gentleman or lady called District Administrator will be a serving officer of the district.So his terms and conditions of service as he has said should be spelt out generally for all so that there is uniformity and if that is to be done in the Public Service Commission. We should not have a conflicting provision that it is to be done by Parliament. I think that is the point that the Chairman might want to concede.

THE DEPUTY CHAIRMAN: Let us hear from Honourable Nasasira.

MR. NASASIRA: Thank you, Madam Chairperson. I am seeking another clarification from the

Chairman of the Committee whether they could accept an amendment of Clause 3 to read that: *"Parliament shall by law prescribe the functions of the Chief Administrative Officer only."*

THE DEPUTY CHAIRMAN: How about the qualification? There was an amendment by Honourable Kitariko to include the qualifications. So it will be qualifications and functions?

MR. NASASIRA: Yes, Madam Chairman, I do not mind.

THE DEPUTY CHAIRMAN: And leave out the terms of service?

MR. NASASIRA: Yes.

MR. KATENTA APUULI: Madam Chairperson, if that be the case then I would want to go along with Honourable Nasasira that we only talk about functions.

PROF. NABUDERE: Madam Chairman, my first question actually was concerned with functions. The question of Parliament providing for functions. What kind of functions would Parliament provide for beyond what we are saying here. If you look at the old 207 which provided for the District Chief Executive, the only function given there was that he should oversee the general administration of the district in as much as administration is concerned. But we have already in this particular Clause 2, indicated another function of this particular officer, namely that he shall be the Chief Accounting Officer. So I do not see what else that Parliament can say on this matter. I think we will be safe to say that his functions will be. I would go with Dr. Kinyata's point of view that first he is the head of the civil service in the district. Two, he is the Chief Accounting Officer in the District and three, that he is in charge of general administration of the district. Those are all functions of this particular officer and there is no need to encumber Parliament with the need to make legislation about nothing. So I would move that we delete the rest of the functions. In view of the fact that the Chairman of that Committee has agreed that there is no need to provide for the other aspects which he had included there. Unless he can convince me I would move to delete.

MR. BIDANDI SSALI (Nakawa Division): Madam Chairperson, I would implore the Members not to rush into deletion of this particular provision. I think it is now more technical drafting than a real substantive policy matter. I think when we are doing the technical drafting, if they find that this is taken care of in the other provision, I think it will be ironed out accordingly. Otherwise there is a bit of doubt as to whether what the Honourable Nabudere is saying, may not be conclusive. By itemising the three then you have included everything including being the Chief person responsible for the implementation of the policy or the decisions of council. I think we should leave it to the technical drafts people to relate the two.

THE DEPUTY CHAIRMAN: Honourable Nabudere, I think you had reached some good consensus so I think we better retain what you have and say when it come to drafting as Honourable Bidandi Ssali is saying. Now this is the position where we are that Clause 3 would read: *"Parliament shall by law prescribe the qualifications and functions of the Chief Administrative Officer."*

(Question put and agreed to)

THE DEPUTY CHAIRMAN: And I put the question that this stands part of this Constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: I think now we are through with Article 212. Honourable Kweronda Ruhemba.

MR. KWERONDA RUHEMBA (Kajara County): Madam Chairperson, before we leave this question of terms and service. I wanted the Chairman of the Committee to inform me whether we have actually empowered Parliament to prescribe terms and conditions of the chairman and his team. Otherwise if we leave them to prescribe their own terms and conditions, we may find that he is overpaying himself and draining the coffers of the district.

THE DEPUTY CHAIRMAN: You are referring to which Article and which Clause?

MR. KWERONDA RUHEMBA: It is not necessarily under this clause but I was reminded and therefore that is why I was enquiring whether we

have provided for Parliament to step in and set out terms and conditions of the Chairman and his team.

MR. KATENTA APUULI: Madam Chairperson, I thought that the Honourable Member should bring that matter at the reconsideration because now I have to go back into the text and search. We passed that area long time ago, you are putting me to task. I am now preparing to present a new Article and you are asking me to go back into history.

THE DEPUTY CHAIRMAN: Honourable Kweronda Ruhemba, let us do it like this, go and dig out the problem you feel is inconsistent, check with the chairman and the technical committee. Usually they make a list of the contradictions that are appearing in the areas that we have already decided on so that later on we can reach them.

MR. KWERONDA RUHEMBA: Thank you, Madam Chairman, but I was only thinking aloud.

THE DEPUTY CHAIRMAN: Thank you very much. I think he has taken note but what I am saying you can also do us a favour by spelling it out clearly.

MR. KWERONDA RUHEMBA: I am going to do that.

MR. KATENTA APUULI: Madam Chairperson, I would like now to direct the Honourable Delegates back to page 22 item 14, new Article 214, Clause (1). The Committee recommends that former Article 211 be deleted and a new Article be inserted to read: Clause (1) *"Responsibility for the subject specified in the Fourth Schedule of this Constitution is exclusively reserved for the Government."* Madam Chairperson, I beg to move.

THE DEPUTY CHAIRMAN: Honourable Katenta Apuuli, my text does not seem to tarry with what you are reading.

MR. KATENTA APUULI: Let me read it again, Madam Chairperson. Clause (1) of Article 214 *"Responsibility for the subject specified in the Fourth Schedule to this Constitution is exclusively reserved for the Government."* Madam Chairperson, I beg to move.

MR. OKALEBO EPHRAIM (Bukedea County): Thank you, Madam Chairperson. I am seeking clarification from the Chairman of Committee Four on this particular sub-clause. When he says responsibility specified in Schedule Four to this Constitution is exclusively reserved to the Government, that is central government. Under Article 227 which we are coming to, says the power of Public Service for example under item 18 of the Schedule. The power is taken down to the District Councils to appoint the Members in their own service. So what is exclusive about this particular provision here. I seek that clarification, Madam Chairperson.

PROF. KANYEIHAMBA GEORGE (Rubanda County East): Madam Chairperson I am also seeking clarification from the Chairman of the Committee. I have looked at the Schedule which is referred to in this Article which the Chairman has read and it is a very formidable long list. Presently, Madam Chairperson, all the powers of government are vested in the Central Government by virtue of the fact that we have at the moment a unitary form of government. Now, the principle of decentralisation means that we are now returning these powers to the people at the local level,namely at the districts. I would have thought it would have been more logical to enumerate the powers which were returning to the people rather to enumerate these. At the moment, as I say all the powers are at the centre. Secondly, Madam Chairperson, this kind of formulation is one that is often expected in a true federation where you have exclusive powers to the centre and exclusive powers to the local authorities. I do not know whether that is the criterion we are using for our kind of decentralisation. Therefore these, Madam Chairman, are principles we need to address ourselves on before we accept this list willy-nilly when we do not know where it is getting us. I would have preferred that we enumerate the powers which we want the districts to exercise since already the powers are in the central hands. So I would like some clarification on that point, Madam Chairperson.

MR. ELYAU MIKE (Kalaki County): Thank you very much, Madam Chairperson. I equally have the same fears because the list here, Madam Chairman, we know the local councils are equally oppressed. For example, if you see the Fourth Schedule it has things which has to do with taxation. Are we not saying that these people can also tax? There is also No.7 talking about land and so on but you find people today are interested in governing land themselves. If we put these things without first

of all studying them I am afraid we shall have problems.So I thought this Schedule should be studied carefully before we make a mistake of passing them. I also have suspicion, this list is too long but it could affect the local authorities. We could demarcate the areas where such transfers may be done. Somebody should give us a guide before we conclude. Otherwise we can make a terrible mistake while formulating this schedule. So I would also like clarification from this list, it is too long and we need time to study it.

THE DEPUTY CHAIRMAN: Honourable Delegates, before you proceed I have some requests by Honourable Baguma Isoke, Honourable Owiny Dollo and Honourable Kasole Bwerere. I can see Honourable Kasole Bwerere is around so he will be able to introduce his Motion.

MR. KASOLE BWERERE (Buwekula County): Thank you very much, Madam Chairperson. Madam Chairperson, in our Select Committee One we were given the duty to handle land and environment. Among the things we worked on land and mines and mineral and water, according to Schedule Four, number seven, eight and twenty-four are in the hands of Local Governments. Now that we have not dealt with the report on land from Select Committee One, it is the wish of Select Committee One Delegates to ask this Honourable august House to stand over on this Article 214 until this Assembly has dealt with this Chapter dealing with Land and Environment.

THE DEPUTY CHAIRMAN: I think that is a logical request which will not really need to debate because what we are deciding on is not yet decided on then we will have to revisit.

MR. MALINGA IGNATIUS (Usuk County): Madam Chairman, that is quite a good request to come from the Member but we could do this. Discuss the principle whether we want the list like this and just defer that item on land,the item they have objection to.Otherwise we discuss the others. We cannot postpone everything until we have done everything. We have to continue working until we come to the end.So I really do not want us to get derailed over this. Let them single out which item they do not want to be decided upon then we stand it over and discuss the rest.So that we get over the principle which Prof. Kanyeihamba was putting forward and we get that out of the way. Whether we actually will have a list exclusive to the Central Government or not. Or whether we shall have a list only exclusive to the Local Government or we shall have three lists exclusive to the Central Government, exclusive to the Local Government and concurrently. Then there will be anything residual we have to decide what happens to that.

MRS. MAVENJINA CATHERINE (Women - Nebbi): Thank you, Madam Chairperson. I would like to agree with what Honourable Kasole Bwerere has stated. What is the use of discussing the principle now when we cannot take a decision instead we will be wasting time. We would rather refer this particular topic. Select Committee One is meeting in two days time! So why don't we postpone and wait until Committee One completes its work, we meet once and we discuss and we take a decision. Thank you.

MR. SEBI HAROUN (Koboko County): Thank you very much, Madam Chairperson. Madam Chairperson, I would rather say if we could discuss the principle because if you look at all the items from I - 29 there are quite many of those that overlap what we have discussed in other Chapters. For instance, Defence, Security, Citizenship, Foreign Relations, Public Service. We have handled these things so my opinion is that we discuss the principles.Fortunately the Members are here, the Members of this Committee. They can educate us on how far they have gone on this and what they would want to be amended rather than us holding and waiting until when we have discussed that Chapter. That would kind of delay us, it would hold us back too long.

MR. SAKWA DARLINGTON (Bungokho South): Thank you, Madam Chairperson. I think the issue here is whether or not we accept the principle of having certain responsibilities exclusively under the Central Government and I think that is the issue. The list will depend on what the Assembly will agree on. So I would propose that since Committee One has put certain aspects which appear to be in this Schedule. The best way to go around this would be that CommittEe One and Committee Two would try to go round and look at their lists both of them. Point out those areas which appear to conflict. Those are the areas which we shall discuss and vote on but we should really agree here whether or not we can have certain functions exclusively held by the Central Government. I thank you.

THE DEPUTY CHAIRMAN: Is that agreeable that we debate the principle so that when we come to make the list just we are listing?

MR. AWORI AGGREY (Samia Bugwe North): Thank you, Madam Chairperson. Madam Chairperson, before we put off this topic first and foremost I am seeking clarification on the title. When we say functions are we implying both legislative and administrative or are we confining ourselves to purely administrative? It is important to get this clear so that some of the items which have been listed on the Schedule can actually be removed or can stay.

THE DEPUTY CHAIRMAN: Honourable Aggrey Awori, one time a similar question was asked and the Chairman said those are just guidelines they are not part of the Constitution. I do not know really whether we should debate that title and whatever have you which are not numbered as a clause because that is language. I remember one time that was the decision that what is in the margins are just indicators so they cannot bog us down.

MR. AWORI: This is in the Schedule. The Title of the Schedule itself makes a lot of difference Madam Chairperson.

THE DEPUTY CHAIRMAN: So what is your proposal?

MR. AWORI: We call it legislative functions, we should be more
specific.

THE DEPUTY CHAIRMAN: Let us hear from Honourable Mulenga.

MR. MULENGA: Thank you Madam Chairman. Madam Chairman, it is correct that marginal notes are guidelines but are not even used in interpretation of the contents of the Schedule. That is why, I think, up to now we have not been called upon to discuss the contents of marginal lines. This is left mainly to the Draftsman after we have settled the contents of the clause to see whether that summary called marginal notes is actually what the content of the clause or the Article. Invariably it is on the entire Article. So it is not really important for us to go into the content of the marginal notes.It is marginal notes by the way not marginal lines. But, Mr. Chairman, let me use this opportunity to also draw the attention of the Assembly back to the suggestion by Honourable Malinga. While it is appreciated that Committee One is concerned about the content of the Schedule in as much as some of the subject or items listed there they have recommended for Local Government. Therefore, there is some sort of conflict, there are important divisions to be made first following the point raised by Honourable Kanyeihamba. Do we list functions or powers or subjects that are reserved to Central Government or do we list those that are being given to the Local Government? That has to be decided since there is a question raised already and that can be done without looking at the list first. Once we have decided that, if we should adopt the line taken by Committee Four then we look at the list. That is the time when Honourable Kasole Bwerere and others will say but for this item No.8 and others. We would like you to hear Committee Four before you agree to leave it here or not or they could even, in the course of arguing the list convince us and we delete it from this list. So there is no point in suspending debate on this Article, Madam Chairman.

MR. KATENTA APUULI: I thank you, Madam Chairperson. Madam Chairperson, this morning I had a discussion with Honourable Baguma Isoke the Chairman of this Committee that is requesting. What he intimated to me was that their desire was to stand over item 7, 8 and 24. Their desire was not to stop the exercise of our considering this particular Article, they wanted us to stand over these particular items. Therefore I would like to recommend that we go ahead and if you allow me, Madam Chairperson, then I can clarify the Honourable Delegates. Madam Chairperson, I think I have covered the item regarding the request of Select Committee No. One. Honourable Baguma Isoke wanted us not to make a decision on No.7, No.8 and No.24, that we stand over those items until they have pronounced themselves but he did not object us going ahead with the other items in the schedule. So I would like to ask Honourable Delegates that we should go ahead, the debate the principle. I am ready to clarify the Honourable Delegates that asked questions.

THE DEPUTY CHAIRMAN: Thank you very much, that is now cleared because we are hearing it from the people who brought forward this Motion so you can continue Honourable Katenta Apuuli.

MR. KATENTA APUULI: Madam Chairperson, let me start by clarifying Honourable Okalebo. He asked about item No.18 in the Schedule. Here if you see, Honourable Okalebo, we say Public Service of Uganda. We were careful to use the word 'of Uganda,' to mean the Central Government and therefore to exclude the Local Governments. Honourable Kanyeihamba wanted to find out whether we should actually have a list or not or whether this list should be for the Local Government or the Central Government. Madam Chairperson and Honourable Delegates we took a long time discussing this matter. When we started we actually had three lists. An exclusive list for the Central Government, an exclusive list for the Local Government, and a concurrent list where services are shared. When we had done that comments were made by the Technical Team and from those governments we were forced to call in experts from the Ministry of Local Government. We also took advantage of looking at Constitutions of other countries and the wisdom of the Select Committee Four was that it is more logical to have an exclusive list of the Centre which contains fewer items. The few items of the Centre are easier to handle in an exclusive list than in the very many items of Local Government. Why did we chose not to list the items, the exclusive list for the Local Government? Because as this country develops those items will change from time to time and, therefore, our list will become out of tune with what we intended to do whereas the exclusive list of the Centre as the country develops. What the exclusive list of the Centre has, as the country develops, what the Centre will do is to delegate its responsibility down to the districts. Things like arms, explosives and ammunition are things that are standard in every Constitution and they do not change with time. Defence and Security are in a similar line. Banks, Banking and Promissory Notes also falls in that kind of category. But take example of item 21 Education Policy, Standards and Post Primary Institutions. This item could become an item that the Local Government could handle. Therefore, since we have provided somewhere in the Constitution that the Centre can delegate some of its authority to the districts, this item could cease to be on the exclusive list of the centre and be passed on to the Local Government. Therefore, in that way the list of the Central Government will continually shrink as the Local Government become more capable of handling certain items. I could go on for ever but I think that was the rationale, Honourable Kanyeihamba as to why we decided to have only an exclusive list for the Centre. Mainly because the exclusive list for the Local Government is so long and varies from time to time and will, as the country develops, change. Honourable Awori I think was adequately answered as to the functions and services. Honourable Awori the most important thing here is responsibility. The word 'responsibility' is the most important item in this clause, it is not so much as functions and services. We are talking about the responsibility for the items and we say here in Clause I that responsibility falls with the Central Government.

MR. LUBULWA MIGADDE (Katikamu South): Thank you very much, Madam Chairperson. I also want to request the Chairman of the Committee to say something about No.12 and No.14. Because in No.12, this list which is exclusive for the Central Government says that the Central Government will regulate trade and commerce with foreign countries. But then I am worried about this last part,'and between the districts,' because if two districts decided to trade together why should the Central Government come in to regulate trade and commerce between those two districts? And also now that we have passed a provision, some provision within the Constitution that two or more districts can decide to cooperate. If they have decided to cooperate, is there need for the Government to come and regulate trade and commerce between the districts that have cooperated? That is one clarification that I am seeking from the Chairman *(Interruption)*

MR. BIDANDI SSALI: Procedure. Madam Chairperson at one stage I thought you had more or less concurred with a proposal from the Floor. Which I understood as a ruling that we first address ourselves to whether we should list the responsibilities of the Central Government or whether we should list those of the Local Government. Once we say yes to the list of the Central Government then we go one by one, one,two, three, four and so on. I think that would be more logical so that when we reach twelve or thirteen or whatever any clarification required is then demanded of the Chairman.

THE DEPUTY CHAIRMAN: Honourable Biddandi Ssali, I think the Delegates want to be clarified by the Chairman then after that we can make a decision whether to follow this list or whether to have the other one based on districts. I

was allowing the Members because you said we debate the principle. I let them ask the questions and then the Chairman will answer and then we shall proceed. Let Honourable Lubulwa Migadde continue.

MR. LUBULWA MIGADDE: Another clarification that Madam Chairman I was seeking from the chairman was in connection with item No.14 which talks about the National elections. I thought that the handling of the elections whether at national or at local level is a matter for the centre. Basically those are the two that I wanted the chairman to clarify. Thank you, Madam Chairman.

MR. KAMURON PETER (Kongasis County): Madam Chairperson, I would like to know from the Chairman of the Committee whether it was a serious omission or not where the Committee considered the natural disasters like floods, earthquake. For example the Chairman himself comes from an earthquake-prone area. Where did they place such very serious matter? Is it under Local Government or in Central Government? I am saying this because some districts may not be able to meet the seriousness of the damages made by natural disasters like earthquakes and for example floods. I would like to know whether it was serious omission or it has been listed elsewhere. Thank you very much.

MR. OBUA OTOA (Erute County North): Thank you, Madam Chairperson. Madam Chairperson, I would like to react to the rationale elaborated by the Chairman of Committee Four as to how they arrived at this listing of things. First of all, my reasoning is that before functions and services are decentralised, the assumption is that the CentraL Government is responsible for everything, for the functions and services. It is only those functions and services which it feels can be handled at the local level. It is only those that are then given to the local authorities. So I thought it would have been better if they started to list the functions which should be reserved for local government rather that do it the other way round. That is the principle I am trying to advocate because as I said the basic assumption is that services which are not given to the local authorities are pressured to be the responsibility of the Central Government. This is without going into the various details of what is listed here because the list, Madam Chairperson, cannot be exhaustive. Since it cannot be exhaustive what about those lists like the one just pointed out by the previous speaker? There may be so many like that and I think it would be safer to go with the assumption that whatever is not given to the local authority it is presumed that the Central Government will handle those functions and services. I think it is safer that way rather than the other way round, Madam Chairperson. Then of course there is a possibility that there is the grey area or rather the areas of concurrent responsibility. That one is also another aspect which is not necessarily contradictory to the one I am saying. There may be certain areas which are better handled by the collaboration between the centre and the local authority than exclusively by one or the other.

MR. KANDOLE CLEMENT (Kyaka County): Thank you, Madam Chairperson. Arising from the previous speaker's contribution, Madam Chairman, I think it is the other way round. I am happy he talked of an assumption because already we have passed a principle that all powers belong to the people. What we are trying to do in this Constitution and particularly in this Article, we are saying that the people have the powers. And we are transferring all these powers to the people except what is being retained at the centre and definitely the powers on to the people are unlimited. There is no way you can outline all these powers given to the people but we are only mentioning in this provision the exceptions that are going to remain at the centre. I think that is a principle and once we accept that principle I do not see any problem, Madam Chairman.

PROF. KANYEIHAMBA: Thank you, Madam Chairperson. Following from all those explanations, in fact, I think the matter becomes even more complicated. Because, for example, Honourable Kandole is talking about power being reserved to the people. Of course, the people do elect members of the central government, the President. So even those powers which are exercised by the President or his team does not necessarily mean that the people are not exercising power through them. However, Madam Chairperson, my further point of seeking clarification is when they say that these powers are exclusively reserved for the Central Government. I think that there is a misunderstanding there because when you read the Chapter as a whole there is a recommendation that Parliament or the President can move Parliament to recall some of these powers. So they are exercised by the Central Government. I think there is a provision which says that the council or the people of a district can

surrender some of these powers back to the centre where they are unable to exercise them by themselves. Therefore the word 'exclusive' is misused in this context. I would prefer what other Constitutions do. What other Constitutions do which are not federal, they provide that the Central Government shall be responsible for the following functions. We shall exercise the following powers, shall be responsible rather than use the word 'exclusive' in the Constitution which is tying the people. If you said in the Constitution that this power is exclusively reserved for the districts and then later on the President moved that a certain power should now be exercised with the consent of Parliament, should be exercised by a Ministry of Government, then surely you are contradicting the Constitution. So I think it is much more logical to say that the Central Government shall be responsible for the following powers or the Local Government shall be responsible for the following powers. Secondly, Madam Chairperson, if you look at these powers which have been enumerated and particularly the last lot which says that any matter incidental to the functions and services mentioned in this Schedule. It is very difficult to be exclusive in these matters. If you talk of education, for example. Maintaining standards of Primary Education, that power is not exclusive in the sense, for example, that if a district council is determining a syllabus of its schools, primary schools, it is likely to touch on standard. Therefore there would be nothing exclusive about reserving these standards to the Central Government. So in my opinion we need a further thinking about this matter and further clarification so that we do not use words which are going to tie us down and bring us problems. So I wondered to see whether the Chairman of the Committee could comment on that particular view even before we debate whether the powers should be given exclusively to local government or to central government. Whether you would have objection to saying we drop the word 'exclusively' and we say the Central Government shall be responsible for the following, whether powers or functions rather than 'exclusive' which is contradictory.

MR. KATENTA APUULI: Madam Chairperson, I thought Honourable Mulenga cleared this matter earlier on as to titles. *(Interruption)*

THE DEPUTY CHAIRMAN: No, I think Honourable Kanyeihamba had gone to 214 (1) which says: *"Responsibility for the subject specified in the Fourth Schedule to this Constitution is exclusively reserved to the Government."* I think that is his problem.

MR. KATENTA APUULI: I was going to get to that, Madam Chairperson. Earlier on in our debates here this afternoon Honourable Mulenga, I think it was an answer to a question raised by Honourable Awori. He said these titles and marginal notes will be taken care of by the Technical Team when we have finished this exercise. If the Honourable Kanyeihamba feels that we should not use this exclusive, to me this is a drafting matter, it can be dropped. What to me is the substance is whether he agrees whether arms, ammunition and explosives should be the responsibility. Because when I introduced this clause titles not withstanding I said responsibility for the subject specified in the Fourth Schedule of this Constitution is exclusively reserved for the centre. We can drop the word 'exclusive' or use a better terminology. I really have no objection to that and I think the most important thing here is who is going to be responsible for what, that really should be the thing that we should determine.

THE DEPUTY CHAIRMAN: Honourable Delegates, now we have surveyed the question but what I see as the outstanding question now is whether we list the obligations of the Government or the obligations of the Local Authorities. Then after that we will be able to go one by one and see what we eliminate and what we include and where we say that is multi purpose, it can be shared by both. That is what is the contention. So let us clear this one first whether we go by this one or we need to start from the other way round.

MR. BIDANDI SSALI: Madam Chairperson, I would like to appeal to the Members that on the basis of the information by the Chairman where the Committee started with three lists, the Central Government, Concurrent and Local Government. Then ultimately we called in technical advice not necessarily from the Ministry of Local Government but through the Ministry of Local Government to International Consultants. They advised that it is normal and advisable to specify the functions of the Central Government. Anything that is not specified as a function by the Central Government is automatically a function by the Local Government because as it has been stated before the responsibilities of the Local Government are inex-

haustible. Therefore, we also went ahead and looked at some Constitutions. We looked at that one of Germany although it is a federal Constitution but the substance of their constitution and ours, the way we have drafted ours is just the same. We looked at the Denmark Constitution, the NORDIC Constitution where there is the same decentralisation, Papua New Guinea. We looked at all these and the general pattern was that they specified the functions of the Central Government and all that which is not mentioned was left to the Local Government. Therefore unless it is a technical basis for going otherwise I would really implore the Members not to be subjective but to be a little bit technical since we are dealing with the Constitution issue. Thank you.

DR. MAGEZI DAUDI (Jinja Municipality East): Madam Chairperson, you see this concept of decentralisation, I will repeat what I said yesterday we must try to understand the concept of decentralisation. We have at the centre government ministries, we have the Ministry of internal Affairs, the Ministry of Defence, the Ministry of Natural Resources, the Ministry of Local Government. The more I think about that I see that, for instance, when we look at elements two, Defence, Security, maintenance of law and order. We say this is reserved for the centre, there is the position of the local district government - *(Interruption)*

THE DEPUTY CHAIRMAN: Honourable Magezi, we said we are agreeing on the principle whether we take this list then we discuss one by one, eliminate it or keep it or whether we are saying that we list even all the district obligations. That is what is on the Floor then after that we shall start in orderly manner. Okay, let me ask a question before you proceed. What would you prefer - *(Interruption)* Just hang on, we cannot both of us talk. We do not want to derail the discussion. What we are saying is that there are two aspects we are addressing. One, from the explanation we have received they are saying that everything belongs to Local Government except the following. Then there is another way that these aspects will be carried out by the Local Government and you list them all. If you agree that we take this version that all belong to the Local Government except these ones which are listed as the Honourable Bidandi Ssali has given us that it is conventionally done in most places. Then after that your point will come in either you refuse to say delete. We retain it, we debate it and we go systematically but this jumping to and fro is not helping us. So can you address yourself on that issue? Whether we follow on this one because we have picked on two but we do not have the list of Local Government. Should we decide that we need one for Local Government we will have to produce the list of Local Government which they say it is inexhaustible.

DR. MAGEZI: I think the whole idea of having the list is going to be misleading because there is such an inter-link between these services that if one wants to be very legalistic it will make the exercise of this decentralisation very difficult. I think we should go more into defining how these services can be devolved to the districts than coming out with a list, the list is going to confuse the whole exercise.

THE DEPUTY CHAIRMAN: Okay, Honourable Magezi, then make a substantive Motion of what you want to be done and then we shall follow that one.

DR. MAGEZI: Madam Chairperson, I beg that this Article be referred back to Committee Four so that we look at the whole concept of decentralisation.

MR. KAYONDE ISRAEL (Gomba County): Madam Chairperson, I wish to inform Honourable Magezi that if he bothers to look at Article 214 Clause 2, some of these functions can be delegated to lower local governments. Or districts can also ask to shift what is reserved for them to go. In other words, what we wanted to make is a distinction between who is responsible for what. Now this list shows the exclusive list reserved for the centre. It does not follow that the Centre may not delegate some functions. For instance on first number two on the Schedule, Defence and Security. We know that the RC will participate in this function but that function will have been delegated to local government either by law or by the government itself. So all we are saying in this list is that we want to know who is responsible for what, is it the Local Government, is it the Central Government. So I see no reason why we should refer this matter to the Committee because the Committee had several questions on this matter. We consulted the experts as the Honourable Bidandi Ssali has said. What is important here and what should be noted is that we want to make a distinction. Who is responsible for

what and that is why we eliminated the concurrent list because the concurrent list would not tell us who would be responsible for what. So, I think he should take it in that light that we want to make a distinction that the Central Government should be responsible for certain functions. The rest should be reserved for the Local Government. Thank you.

DR. KABERUKA WILLIAM (Ndorwa County West): Thank you, Madam Chairperson. I have been trying to correct this impression where we have been told that in most Constitutions they provide exclusive list for the Central Government. They do so because the beginning is different from what we are doing. In those countries which are quoted you first have sovereign states which want to come together. Each one comes with a list which they want to give up to the Centre and that is how they arrived at that list. But for us, all the services are at the centre and I think in concurring with Honourable Kanyeihamba's suggestion, it would have been proper for us to have stated which functions the centre wanted to give to the lower councils. I think that would have been the best but otherwise to say that the other Constitutions do that, they do that because they begin from different premises. So our circumstances would have dictated that the centre enumerates which services it wants to give away to the local levels. The second point, Madam Chairperson, here when we are dealing with this Article there are two concepts or two things that we are dealing with. One is the formulation which this Committee Four has preferred to the formulation of the original Draft. Then the other concept or the other aspect is the schedule as to whether what is there is what should be there or what should be where, then the other one is on formulation. I want to say that the Draft Constitution to me is superior to what this committee has given us. Therefore, I would think that if we reverted to the original article we would be better off. So we have to differentiate the two, whether we should go to the original article as to formulate, then we look at the schedule on its own merit. So, there are two things, Madam, which I would want us to consider while considering this article.

PROF. NABUDERE: Thank you, Madam Chairperson. I think that we should go by the procedure that is established, namely we go by the recommendation of the committee. If there is any Honourable Member who wants to amend the recommendation of the committee, then he or she makes the Amendment and we debate the Amendment. In this way we are not going to get anywhere. So, I propose that we move with committee's recommendation and accept it or reject it or amend it.

DR. CHEBROT STEVEN (Tingey County): Madam Chairperson, in light of what Honourable Nabudere has just suggested, I beg that instead of going into circles, you should put the question. Because I think it is very clear, what Honourable Bidandi Ssali has said is the need to have functions of central government put in place. Otherwise, you will have a lot of conflict between the centre and the local authorities. So, Madam Chairperson, I suggest that you put the question.

THE DEPUTY CHAIRMAN: It does not pay to put the question when Members are not clear. The more you debate the clearer an aspect becomes.

MR. KAGIMU KIWANUKA (Bukomansimbi County): Thank you very much. Madam, I beg to amend Article 214 Clause 1, to read: *"The subjects specified in the fourth schedule to this Constitution, will be the responsibility of the Central Government."* Madam, I beg to move.

THE DEPUTY CHAIRMAN: Has it been seconded? Okay, Honourable Aggrey Awori has seconded it.

MR. KAGIMU: Thank you, Madam. Why I am moving this, I would like to get rid of the word 'exclusively.' Madam Chairperson, as you can see you cannot leave all these functions exclusively to the central government, because there is a linkage. For example, when you go No.2, you cannot say that defence, security, maintenance of law and order will be exclusively left to the central government. Whereas we know very well that there are Local Defence Forces which are going to be under the districts. Madam, when you go to cases like schools, educations, still you cannot say that is exclusively for the central government. Now, my argument is that we put these functions under the responsibility of the central government so that when we come to 2, we may see what can be shared. Otherwise, if you say it is exclusively then we are contradicting ourselves. There are many examples, when you go to taxation, we are soon coming to Article 215 whereby the local governments are being given power to levy and collect taxes. Even under Article 216 whereby local governments are

going to levy taxes on behalf of the central government. Madam Chairperson, as one Honourable Member pointed out that there will be trade between districts. Again that cannot be a matter which is exclusive for the central government, whereas we have passed that districts which want to combine can combine. It is true things like No. 1 whereby there is arms, ammunition and explosives. That one is understandable, but Madam, there will be a lot of contradictions even when you go to 27, hospitals, public health, all these are going to be shared. So, what I would like to move is that we leave the fourth schedule that will be under the responsibility of the central government, but not exclusive. It can be under shared responsibility.

MR. KANDOLE: Thank you, Madam Chairman. I think we are getting more and more lost. At one time the Chair was about to guide us, taking a position on the principle whether we are having the schedule spelling out what is reserved for the central government or having the list for local government. That one we have not been able to decide. However, I wanted some clarification from Honourable Dr. Kaberuka, if he realises that decentralisation is a process whereby more and more powers will be getting from the centre to the district. If that happens shall we have to amend the Constitution every time more and more power is being decentralised, what happens? Because the process of decentralisation is not final. We cannot say now that this exclusively belong to this and this one exclusively belongs to that. It will be an on going process, and if that is so then it is easier to have - *(Interruption)*

MR. NABUDERE: Point of order. Madam Chairperson, I thought that now we are debating the Amendment by Honourable Kagimu. We cannot go back to the general debate. We are now moving in a systematic way and there is a clear Amendment which we must deal with.

THE DEPUTY CHAIRMAN: The Member is in order because he wants to be clear so that he understands what the Motion by the Member is. I will answer him in that as we were debating some people indicated that it is even better to go back to the original. Now, when you look on page 144, where you have the Fourth Schedule it says functions and services exclusively reserved to the Central Government, except this list of the schedule we have is longer than that one in the Draft. So, I assumed by implication that Members have preferred to follow what is in the draft and what has been presented to us. So, after that we went back to 214.1 and Honourable Kagimu is saying that we remove the word 'exclusive' to make the whole issue flexible. That was my understanding.

MR. KAGIMU: Yes, Madam, that is my point that we remove this word exclusive so that we make the issue flexible.

MR. KATENTA APUULI: Point of information. Madam Chairperson, I would like to inform Honourable Kagimu that when Honourable Kanyeihamba raised this matter, we as a committee considered on the issue of exclusive. So, it was not really necessary for you to move a Motion, because the committee considered that.

THE DEPUTY CHAIRMAN: I see. There was a lot of confusion in trying to streamline ourselves into whatever we are arguing. Honourable Kagimu, they are saying that they are consenting. But Honourable Katenta Apuuli, this is what Honourable Kagimu heard that subjects specified in the fourth schedule to this constitution would be under the responsibility of the Central Government, that the language he is using.

MR. KATENTA APUULI: Madam Chairperson, I would like to appeal to Honourable Kagimu that he leaves the word reserved there, for purposes of the Central Government, and in legal drafting I am advised that the word reserved should remain in this schedule as a heading in this schedule.

PROF. KANYEIHAMBA: Madam Chairperson, I have had a lot of consultations with the Chairman of the committee and Honourable Bidandi Ssali who has been, especially interested in this subject. As a result of that consultations, I am proposing with your permission, Madam Chairperson, the following Amendment which, I think, shall help us to proceed and we get out of this dilemma. I am proposing that Clause 1 of Article 21, be substituted with the following that: *"Subject to the provisions of this Constitution, the subjects specified in the Fourth Schedule to this Constitution shall be the responsibility of the Central Government."* I will explain. But I think this will solve the problem. I can clarify and give reasons why I think this would be better. May I, Madam Chairperson?

THE DEPUTY CHAIRMAN: Yes, proceed.

PROF. KANYEIHAMBA: Madam Chairperson, we had a problem of whether, subject should be either reserved for the Central Government or whether we should even enumerate those which should be the responsibility of local government. Now, as I understand it the committee had a difficulty on this matter. And eventually in their wisdom, which I accept, they decided only those matters which are the responsibility of the central government should be enumerated, while the rest which contain many, many small matters of functional role are reserved for local government. Now, if we do this, Madam, we know that we have already or we shall be passing a provision in the Constitution saying that, for example, for some of the matters reserved for local government the President with the approval of Parliament can recall some of those powers to be undertaken by organs of central government. So, that is already, I think, a good principle we have put in the Constitution. Secondly, in so doing they can even recall some of the powers reserved for local government where local government is unable to fulfill the obligation according to the expectations of the people. I have in mind that there may be some of those matters which we have not specified and which would be very crucial for the well being of the people. Somebody comes along and says this matter is reserved for the district council, but because we have a power in the Constitution allowing the President to move Parliament to allow such a matter to be lifted from local government and be performed by the central government, that really would be in order. That is why I am saying we should say that it is subject to the provisions of this Constitution, which is a reference to those provisions. Having said that, Madam, I think, it is important that these matters which have been identified and enumerated in schedule 4 should be the responsibility of the government. The remainder which people can think about, can be then reserved for the local government, subject to that recall power which we have put in the Constitution. I think that really this provision then would cater for every eventuality. I beg to move, Madam Chairperson.

MR. KWERONDA RUHEMBA: Madam Chairperson, having listened to Honourable Kanyeihamba, I am more than convinced that his Motion is not curing the problem we had. If you look at the original Article 211, it was saving us a lot of headaches and a lot of problems by reading: *"Subject to such limitations as Parliament may prescribe, and as may be consistent with decentralisation of local government, district councils may exercise and perform functions and services other those specified in the Fourth Schedule, this Constitution as being exclusively reserved to the Central Government, and may initiate policies and implement programmes in respect of its functions and services."* Madam Chairperson, I do not why the committee 4 had to recommend that we delete and then come and bog us with details of Schedule 4. Even when you look at schedule 4 which they are recommending, they are not even trying to cure the problem of shared responsibilities, because some of these responsibilities recommended in schedule 4 are, actually, shared, as Honourable Kagimu has already pointed out. I would like to leave this job to Parliament and spell out those areas that local governments can undertake from time to time and as need may arise. But to sit here, Madam, and we tick one of these items in the schedules, which were originally 13 and now they are 28. I think we may have to spend here a lot of time. So, Madam, I wish to move that we delete the recommendation 214 and revert to the original draft 211. I beg to move, Madam Chairperson.

MR. BIDANDI SSALI: Point of clarification. Madam Chairperson, we went into this particular provision and we found that this particular provision contained a very, very dangerous element as far as local government is concerned. That Parliament will be able to withdraw almost any responsibility the Constitution is decentralising to local government. This is what we wanted to guard against. The moment we leave the power to Parliament, Parliament depending upon what type of Parliament whether partisan, which type of partisan and so on, will make the whole idea of decentralisation a fuss. Because they will be sitting every now and then and then decide to withdraw, to limit. That is why after very, very intensive discussion in the committee, we felt that the local governments must be protected by the Constitution. Therefore, if you go back to all these you are only saying anytime Parliament can sit and then withdraw this and that. That is the accusation the Minister of Local Government I know at the moment has been accused of that he can anytime withdraw this or the other.

BRIG. KYALIGONZA MATAYO (Buhaguzi County): Madam Chairperson, thank you very much. Madam, there is an obvious contradiction in our mind here, as you may realise that Honourable Members are mixed up with the recommendation and the original draft. As you may have heard the argument of Honourable Kweronda that instead of us to discuss the functions and responsibility of the local government. We have jumped to the functions of the central government, we should detail the functions and the responsibilities of the local government. Then we detail the functions of the central government. Now, when we mix up these ones, you find there are responsibilities which are shared both by local and central. So, this is precisely where I want to be clarified by the committee, what was the purpose for them to have recommended this kind of list and which is shared by both local and central government?

THE DEPUTY CHAIRMAN: Honourable Katenta Apuuli, I want to ask you one question. Do you have the list of local government obligations?

MR. KATENTA APUULI: No.

THE DEPUTY CHAIRMAN: No, if it is not there, are we saying that now we go out and start constructing a list of local government obligation.

BRIG. KYALIGONZA: Madam Chairperson, 211 was serving that problem, because it is specific, it is living an open-end to Parliament to prescribe what would be the functions for local government.

MR. KATENTA APUULI: Madam Chairperson, I hope Honourable Delegate listened to our explanation earlier on in the afternoon. Madam, it is not that we did not look into this matter, we looked into this matter very, very carefully. Even if you look at our terminology, which we have used on page 23, we have been very careful in our selection of words. Madam, we drew up three lists. One for the centre, one for local government and one concurrent list. We looked into these lists. We also consulted, as Honourable Bidandi Ssali already talked about. For example, Honourable Prof. Nsibambi was kind enough to produce for us the Constitution of the Republic of Papua New Guinea, whether Kingdom or Republic, whatever it is. They use an exclusive list for local government, it is as thick as a Bible. Honourable Nasasira is in this room, he knows that he is responsible for the containing of nomadism in Uganda, but I would like to assure him that in certain districts there is no nomadism. Therefore, in this exclusive list for local governments if we were talking about the districts of Mbarara and districts of Masaka. We would have to talk about nomadism, which will be different from the district, say of Kalangala or Kibale where there is no nomadism. In the districts of Kibale on the other hand, we would have deal with the problem of Baboons, which does not exist in Mbarara. Now, if you ask the committee to go into the details of a district by district schedule, then we can do that. But if you ask for an exclusive list for the districts all together the task is next to impossible. The easier of the two tasks, Honourable Delegates, is to provide a list for the centre. I think that is easier than for us to go into district by district or a list that encompasses certain aspects of activities of the district. I did mention to you earlier on that as the country develops, the exclusive list to the centre will be sent down to the district. At the same time what the districts are doing today, the issue of baboons, which is a problem in Kibale and part of Kabarole in Katooke Sub-county where I come from, because we are neighbours, maybe in 20 years will not a problem. Therefore, I do not really see why we should go into the issues of constitutionalising the problem of baboons here. I am not trying to be ridiculous but I can assure you that lake flies, maybe, one day they will not be a problem in Kalangala District. But it is easier, Honourable Delegates, to talk about the list of the centre and then allow the government and Parliament to pass on those responsibilities to the district as and when those districts are qualified and able to deal with those problems. I really would like to seek your indulgence that let us accept the principle of the list of the centre. If you look on Justice Odoki's Draft, it is the list of the centre that appears. They might have looked into this matter and thought that the easier way to do it was by listing the centre. If you do not agree with an item in the list then we can deal with that item on its own merit.

MR. MALIRO GASTON (Mwenge County North): Thank you, Madam Chairman. Madam Chairman, I want to explain the rationale how we came to have this central list. First of all, *-(Interruption)*

PROF. KANYEIHAMBA: Madam Chairperson, I formally moved an Amendment which was seconded, and I wondered whether we are still debating that Motion or not? Because *-(Interruption)*

THE DEPUTY CHAIRMAN: Honourable Kanyeihamba, another Motion was moved on your Motion that we delete, and that departs furthest. So, we have to clear that one first.

MR. MALIRO: Thank you, Madam Chairperson. To start with, this article which appears in the Draft Constitution. When we looked at it very carefully, we found out that it was not giving any exclusive power to the local governments. It was giving delegated powers which are borrowed. When we were having the general debate here, the main objection to decentralisation, was that the powers and functions given to local government are borrowed and, therefore, can be taken away as and when the central government needs. Therefore, we set off -*(Interruption)*.

MR. MULENGA: Madam Chairman, I hate to refer back to this question of procedure, but really it is important. The committee tabled a report and in the report the committee recommends that we amend this article, the way they have reported. The course of deliberations, after we have talked about whether or not their style was correct, we came to a point where Honourable Kanyeihamba moved that the recommendation of the committee be amendment. Now, I think it is not right that someone later moves that we go back to the original draft. The normal procedure is we hear Amendments to the report, if we reject those and reject the report, that is when we go back to the original draft. So, now, I think we slipped up a bit when we allowed the proposal after Honourable Kanyeihamba's Amendment was tabled. I think we should have disposed of that. If we do not like it, we go back to the report and if someone wants to reject the report, that is when he should move that we go back to the original draft. I would, therefore, request Madam Chairman, that we dispose of Honourable Kanyeihamba's Amendment first.

THE DEPUTY CHAIRMAN: Honourable Kweronda, Honourable Mulenga is saying that in order to go back to the original we should have defeated Honourable Kanyeihamba's Amendment. Because it is an improvement on the report. I think on that note I will agree with Honourable Mulenga, that let us agree on Honourable Kanyeihamba's proposal.

MR. KWERONDA: Madam Chairperson, when I was moving the Amendment, Honourable Mulenga was listening and he did not shout point of order. Now, that Motion is on the Floor and I am stuck with it.

THE DEPUTY CHAIRMAN: No, you can sit on it, and Hon.Kanyeihamba, anyway, has no Motion, the Motion on the Floor is that we delete -*(Interruption)*

DEPUTY CHAIRMAN: No, the Motion was that we say: *"Subject to the provision of this Constitution, subject specified in the fourth schedule shall be the responsibility of government."* Then if you do now want that one you will say we delete Honourable Kanyeihamba's improvement, and if you do and there are no more amendments, then we shall go to the original.

MR. KWERONDA: My Motion says we delete 214 and it was seconded.

THE DEPUTY CHAIRMAN: Honourable Kweronda, a wrong does not correct a wrong. We are saying we are wrong and we are being alerted by a Member that let us clear Honourable Kanyeihamba's provision, either it will be passed on it will not be passed. If it is passed, you move that we delete that one.

MR. MALIRO: But mine goes furthest. If mine is defeated we shall come back to Kanyeihamba's Motion!

THE DEPUTY CHAIRMAN: No, but if you delete, then how do you come back to what has been deleted?

MR. KWERONDA: Then it does not come in, Madam Chairperson, if it is deleted.

THE DEPUTY CHAIRMAN: Okay, how about doing it that way. Let us put the question on his Motion. So, I put the question on Honourable Kweronda's Motion for deletion.

(Question put and negatived)

THE DEPUTY CHAIRMAN: So, we go back to Honourable Kanyeihamba's Motion.

MR. MALIRO: Thank you, Madam Chairperson. Now, I think I will shift my way of reasoning to discuss Honourable Kanyeihamba's Motion.

Honourable Kanyeihamba's Motion talks of removing the word 'exclusive' we wanted to retain that word 'exclusive' so that we can reduce on this list. We wanted to have a list which is exclusively reserved for the central government so that the residual powers are exclusively reserved for local government -*(Interruption)*.

DR. BYARUHANGA FABIUS (Kitagwenda County): Point of order. Thank you, Madam Chairman. Is the Honourable Member on the Floor in order to claim that Honourable Kanyeihamba's Motion is trying to remove the word 'exclusive,' when our Chairman has already agreed the removal of that word?

THE DEPUTY CHAIRMAN: Honourable Maliro, you see, the problem is on page 144, there is an exclusive list with 13 items. This one has 29 items, which means there may be some overlapping. That is why your Chairman agreed to remove the word 'exclusive,' because you decided more than double the list we have in the Draft Constitution.

MR. MALIRO: Madam Chairperson, my fear is our intentions or the intentions of the whole committee on this issue which we discussed for about three weeks will be lost. What we wanted is that the powers which are given to the local government are exclusive for the local government and no minister, not even the President can withdraw those powers.

THE DEPUTY CHAIRMAN: But we do not have the list of exclusive powers for local government!

MR. MALIRO: No, Madam Chairperson, on the agreement with the Technical Committee, we were advised that the best way to do it is to list the exclusive list for the Central Government. What you leave behind which is more than what you can list is residual powers reserved by local government, I think this is the method that was used even in the Constitution of America. They stick to where the Congress can legislate and the rest are reserved for the local governments. Unless we are saying we want to give only delegated powers to the local governments which will be removed anytime, we can do away with the word 'exclusive.' But I think our aim was to answer the question of those who fear that the powers given to local government, if not protected can be taken away by any minister, by any President anytime as and when they want. The only solution is to specify what is exclusive for Central Government and what is remaining is left exclusively for local government and we put a statement to that effect.

PROF. NSIBAMBI APOLLO (Presidential Nominee): Thank you, Madam Chairperson. There is also another issue to consider, namely that you have to allocate funds, and you cannot allocate funds when you do not know the responsibility, the functions. Functions also include, according to section 286, powers and duties. So, let us be clear when we speak of functions they include powers and duties. So, there is the question of allocating funds, which is extremely critical. Because if you take countries like Denmark, local authorities get as much as 60 per cent of the national Budget. In this country local authorities are getting less than even 20 per cent, and what you are saying here is that when you are allocating function you have to be clear so that each area -*(Interruption)*.

MR. BASALIZA HENRY (Fort Portal Municipality): Thank you very much, Madam Chairperson. Madam, we are debating Honourable Kanyeihamba's Motion. Now, is it in order really for the Honourable Member to introduce a new concept altogether when we are dealing with Honourable Kanyeihamba's Motion? Is it connected in any way?

THE DEPUTY CHAIRMAN: Honourable Basaliza, Professors are very good at giving preambles, he was giving his preamble to his point. So, you can continue.

PROF. NSIBAMBI: Thank you, Madam Chairperson. So, I am moving and you will be soon internalising why I am moving in that direction, so that when you have these clear functions you pin down responsibility, you also allocate money properly. That is why I am not happy and I will oppose the Amendment, because it is not pinning down the responsibilities exclusively. It has that problem. That is why I am opposed to it. I am giving you the background to our approach, namely that it pins down constitutionally the various functions, it becomes easier to allocate money and further more if something is exclusive, if the function is exclusive it can be delegated, and that is why our approach is superior to that is being proposed here. I think, Honourable Kanyeihamba, slightly misdirected

himself, because it must also be remembered that when we are discussing this Draft Constitution even the word *unitary* was removed as we recall; although I would not like to make you fight secondary wars by dealing with those labels - that thing was removed, and therefore, we are dealing with a peculiar Constitution which is a high breed of many elements, and although it is a high breed, and it is not a unitary as you try to misdirect this august Assembly, it must be made in such a way that functions are very clearly stated; hence our approach, and I would like to also point out that when you say this thing is reserved, it implies that you are again making it a domain of the centre. So, it is not categorical and at the same time is, actually, reserving the functions to that area, and I would like to oppose his Amendment.

MR. NDEGE: Madam Chairman, I would also like to support the arguments of Prof. Nsibambi, because 214.2 clearly says that a district may delegate some of these functions to the central government, and vice versa, the Central Government may delegate some of these functions downwards. So, I do not see why we should labour so much on - so many words and so on; let us be very clear on who is doing what. *So,* I think, that since it took so long for this committee really to look at so many ways this responsibility should be described - I think they came out with a list which we are saying would be primarily or exclusive responsibility by the Central Government. So, let us just leave it, I think, it does no harm; Honourable Kanyeihamba has not told us why the new formulation is better than this one, and why should it be superior, what is the interpretation according to the law? Does it make it less of a constitutional matter when we say responsibility and remove exclusive? Until all these have been explained, I think the original text of the committee - because, if you take 1, interrelated with 2 and 3, it makes a lot of common sense; and I think we should leave it and do not be emotional, jumping on Amendments just for the sake of pleasing everybody. Thank you.

PROF. KANYEIHAMBA: Madam Chairperson, I am really bit amazed by some of the arguments. Prof. Nsibambi said that responsibility should be clear; in my Amendment, the Amendment makes it clear that the subjects enumerated and described in schedule 4, are the responsibility of the Central Government. I am not touching these other clauses in the article which, for example, say that district councils shall have responsibility for any subject not falling under this schedule, that remains intact. So, really the argument of the Professor was presumably a misunderstanding of what I was trying to do. Secondly, the Honourable Member who has just left the Floor, if you say that a matter is exclusive to a body, to local government, then in my opinion, it is a contradiction in terms of, if you say that power which is exclusive can later on be exercised by someone else. This is nothing to do with law, this is logic!

MR. KARUHANGA: Point of information. I just wanted to inform Honourable Kanyeihamba and the whole House that as you have been informed, it took us three weeks to go through this mess. And as it has taken a long afternoon for us even to understand where we are, it will take Members a long time to explain to the population what we have. If we use this word 'exclusive,' people will say, these are reserved for the central government. Then you will say, no, but you see it can be delegated, and they say, no, 110, you are not serious. So, I think Honourable Kanyeihamba is trying to solve a problem for us to explain to our population. We are achieving the same purpose, we are retaining the schedule as it is, maybe, we can amend it a bit. But I think Honourable Kanyeihamba has really seen the light, I think we should give him support.

PROF. KANYEIHAMBA: I thank Honourable Elly Karuhanga for those very kind words. Madam, I think presumably some Honourable Delegates may have forgotten what I read. I want to conclude by reading that very slowly so that people see that there is nothing hidden or complicated about the Amendment. Which as I say I discussed what I wanted to do with the Honourable Chairman of the committee. I see Honourable Bidandi Ssali who has been on this subject for a long time, and they were happy that this could solve the problem. It reads as follows, Madam Chairman, that: *"Subject to the provisions of this Constitution, the subjects specified in the fourth schedule to this Constitution shall be the responsibility of the Central Government."* The others as recommended by the committee in the article remain as they are. In other words, clause 3 which I have read, that is not mentioned is now reserved for the districts, all that remains intact, and I think this clarifies the position, Madam Chairman.

THE DEPUTY CHAIRMAN: Honourable Delegates, I think really we have laboured enough on this issue. Okay, Honourable Nasasira wants to be clarified.

MR. NASASIRA: Point of clarification. I wanted a clarification, in fact, an assurance. I wanted to assure Honourable Kanyeihamba that I have nothing in principle against his Amendment. But I wanted to convince him to remove the word 'subject' and replace it with 'functions and services' so that it tallies very well with the title of the schedule. So that it reads that: *"Subject to provision of this Constitution, the functions and services specified in the fourth schedule to this Constitution shall be the responsibility of the government."*

THE DEPUTY CHAIRMAN: Okay, no problem it seems. I am putting the question, we are just going round and round the problem. Now, I put the question on Honourable Kanyeihamba's Motion.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: Okay, now let me put that question that this 214.1 as amended to stand part of this Constitution.

(Question put and agreed to)

MR. KATENTA APUULI: Clause 2. *"District councils and councils of lower local government units may, on request by them, be allowed to exercise the functions and services specified in the fourth schedule to this Constitution or if delegated to them by Government or by Parliament by law."* Madam Chairperson, I beg to move.

MR. BIDANDI SSALI: I am sorry, Madam Chairperson, if I am trying to appear as if I am dragging the Assembly, but my impression, Madam, is that after Clause 1 we were supposed to go in the details of the schedule.

THE DEPUTY CHAIRMAN: You see, I thought a schedule is an appendix. So, what I had intended, if these are obvious we can clear them and then tomorrow, we start to go in the schedule one by one.

MR. BIDANDI SSALI: Oh, if that is the understanding then it is alright.
(Question put and agreed to)

MR. KATENTA APUULI: Clause 3, *"District councils shall have responsibility for any subject not falling under the fourth schedule to this Constitution."* Madam Chairperson, I beg to move.

(Question put and agreed to)

MR. KATENTA APUULI: Clause 4, *"Subject to provisions of this Constitution, the government may on request by a district council assume responsibility for functions and services assigned to the district council."* Madam Chairperson, I beg to move.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So Honourable Delegates, I think we have removed these aspects. So we shall come to the controversial issue when we are fresh,and we shall start with discussing the schedule. So, we stand adjourned until tomorrow 9.00 O'clock.

(The Assembly rose and adjourned until Wednesday, 5th April, 1995 at 9.00 a.m.)

THE REPUBLIC OF UGANDA

PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

WEDNESDAY, 5TH APRIL 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3847]

Wednesday, 5th April, 1995.

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

PRAYERS

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

(The Assembly was called to order)

CONSIDERATION STAGE OF THE DRAFT CONSTITUTION OF THE REPUBLIC OF UGANDA

CHAPTER 13 - LOCAL GOVERNMENT

ARTICLE 211 - FUNCTION AND SERVICES OF LOCAL GOVERNMENT

THE CHAIRMAN: Hon Delegate, before we commence, I am sorry that we have started late. We were organising tapes, we had run out of recording tapes. And, it is important that, our proceedings are recorded. It seems it has become inefficient. It has been repaired now, I think. The point is that, I was apologising for the late start, attributable to the fact that, on checking, we had no tapes to record proceedings, so they had to acquire them this morning. And so, it is crucial that we record our proceedings. Not only for our own records, but for the future. That explains our delayed start. I was advised by the Deputy Chairman that, you were on Article 211, when you adjourned yesterday. We are looking at the Schedule which appears on page 23. I am given to understand what was left was to consider each Item one by one. 4th Schedule Article 214. Shall we go one by one? I will call out each head, and then we react. If I do not see any objection, it will be deemed to have been approved.

ARMS, AMMUNITION AND EXPLOSIVES.

(Agreed to)

DEFENCE, SECURITY, MAINTENANCE OF LAW AND ORDER.

MR. KABUGO MESUSERA (Nakaseke County): Thank you very much, Mr. Chairman. Mr. Chairman, the responsibility of defence, security, maintenance of law and order, should be shared between the Central and Local government, Mr. Chairman. Not an exclusive duty or responsibility to the centre. We have now trained the Local Defence forces, we have our local secretaries for defence and the like. Definitely, this is a responsibility which has to be shared right from the grassroot, to the top.

MR. CHEBET MAIKUT (Kween County): Mr. Chairman, I also like to support what has been pointed out by Honourable Kabugo. In that, the question of security, is something that cannot only be left to the centre alone. Mr. Chairman, if I can take the example of Kapchorwa District. The people of that district have complemented government efforts in providing security for themselves, concerning the question of cattle rustling, in the region. So, in my view, I think it will be important that, the question of security should not only be a service that is left entirely to the centre, but should be shared with the Local Authorities. Thank you, very much, Mr. Chairman.

MR. NDEGE JOHN (Luuka County): Thank you Mr. Chairman. Yesterday we deliberated on Article 242; the Central Government can delegate part of its responsibility to any Local Administration. What are we trying to do? Should defence be a primary responsibility of the centre for security, defence and maintenance of order? Is it a primary responsibility of Central or the other way round? I think, when you do the weighing, it is in favour of Central Government. But if they know very well that there will be local LDUs and local policemen and so on, this can be delegated under Section 214. We do not have a schedule where we have shared responsibility and under what percentage. We shall be making the whole thing very complicated. So, I think I support the way it is formulated.

AN HON. MEMBER: Point of information. Thank you, Mr. Chairman. This is further information, to what Honourable Ndege has just mentioned. That yesterday, Honourable Kanyeihamba, moved an amendment which was passed on 214 (1) to remove the term 'exclusive.' And we passed an article that, subject to the provisions of this constitution, the functions and services, specified in the fourth schedule, shall be the responsibility of the Central Government. In otherwords, these ones which we are going to pass in fourth schedule, some of it, can be delegated to the Local Government. So, the term 'exclusive' was removed from yesterday's amendment. Thank you, Mr. Chairman.

THE CHAIRMAN: Are you suggesting, we should remove the word, 'exclusive?'

HON DELEGATES: It was removed.

THE CHAIRMAN: It was removed?

HON. DELEGATES: Yes.

THE CHAIRMAN: So, now it reads functions and services reserved to the Government. I am reading the heading on the Schedule. You see, I have to be guided.

MR KABUGO: From what we passed yesterday, it would flow, Mr. Chairman, that, the heading would be, *Functions and Services Reserved to the Central Government.*

THE CHAIRMAN: Not 'exclusively' reserved, knock out the word 'exclusively.' Is it so? Is that agreed, that it is just a consequential really. It is not something that, we have to go and vote on.

MR. ATWOKI AMBROSE (Youth-Northern): Thank you very much, Mr. Chairman. Mr. Chairman, the Schedule which we are discussing now, was reached after a lot of argument in Committee 4. Mr. Chairman, initially, what Honourable Kabugo is expressing was also considered. The idea of having a concurrent list of schedule was also discussed, and the idea of having exclusive functions and services preserved for the Local Government was also discussed. But it was discovered that, in practice, it would not be possible. So, it was decided that, it is better list functions reserved for the Central Government. Then, the Local Government will hand on the residual functions and services, which they are supposed to deliver. So, you find that, there is no way you can share the functions of defence and security completely between the local authorities and the Central Government. The Local Authorities are supposed to hand on residual functions of defence and security and based on the principlé of the evolution of power. It was considered that, certain functions concerning defence and security, will be preserved, would be given to local authorities, especially those, which can easily be handled by Local authorities. So, I think that, when we are discussing defence, security and maintenance of law, we must have in mind that, certain functions and services, will definitely be handled by Local Authorities. The current example of LDUs can suffice, Mr. Chairman. Thank you.

THE CHAIRMAN: I think Delegates we have had good explanation. In absence of a concurrent list, it is very difficult to say, this is shared responsibility and this is exclusive responsibility. I think the provision relating to delegation of functions from the centre, those on Schedule of 4 which can be delegated, could be so delegated by the Central Government under the provisions of the constitution. When it has been brought into force. I do not think we should spend more time on that one. Okay, agreed.

NO. 3 - is Banks, Banking, Promissory Notes, Currency and Exchange Control. For taxation of incomes, profit, and such taxation as arises by way of implementation of the functions and services in this schedule.

MR. NDEGE: Thank you, Mr. Chairman. Under Section 178, Article 178: *"No tax shall be imposed except under the authority of an Act of Parliament."* And we have already passed that one. So, I am moving that, instead of having so many words, we delete and just put taxation, or taxation policy. Because no other tax in any case, can be passed by anybody, unless under an Act of Parliament. So by qualifying it here, it does not relate properly with whatever we have already passed.

THE CHAIRMAN: But that will create problems, that will cause problems. Because the statement which says, *"No tax shall be imposed except under the authority of an Act of parliament,"* extends to a situation where, Parliament through the legislation relating to Local Government can authorise districts to collect taxes, by market dues and all the rest. Which by the very nature are taxes, or even the graduated tax. So that, it will have been imposed by Statute. But he does not fall under this. This is talking about incomes and profits, and taxes arising from the exercise of these functions.

MR. NDEGE: That is why I am saying, Mr. Chairman, that this is qualifying on taxation, in a way of incomes. But the biggest tax responsibility of government under taxation is, really incomes from Customs duty, exercise duty, VAT etc, etc. which does not seem to be mentioned anywhere. And taxation is a very important element of government function.

MR. MUSOBYA GODFREY (Kagoma County): Thank you, Mr. Chairman. In view of the argument of Honourable Ndege, I remember that,

Article 178, was differed pending this Article we are dealing with.

THE CHAIRMAN: Honourable Katenta Apuuli, I saw your hand.

MR. KATENTA APUULI (Conservative Party): Mr. Chairman, that is exactly the same information I wanted to give to Honourable Ndege. That this particular Article 178, was stood over.

THE CHAIRMAN: So, it was stood over awaiting completion of these schedules is it?

MR. KATENTA APUULI: The whole chapter.

THE CHAIRMAN: But I think Honourable Ndege is worried that, the taxation of incomes, profits and such taxes, does not extend to customs excise and such other. Can we hear from the former commissioner of customs, Honourable Byakika Kasajja.

MR. BYAKIKA KASAJJA (Bunyole County): Mr. Chairman, taxation is being covered under 4. But at the same time, under Number 11, they are talking of customs and duties. In connection with foreign relations and external trade. Customs, is not a tax, it is customs duty, not customs.

Then duties, would be customs duties, excise duties which I think should come under 4, under taxation. Instead of putting it under foreign affairs and foreign relations.

MR. KUTESA: Mr. Chairman, if you read 4, it talks about taxation of incomes, profits, and such taxes as arisen by the way of implementation of the functions and services in this schedule. Now, 11 is in this schedule, it is one of the functions of government. So, the taxation there is covered, even the customs and duty, it does not have to be shifted from 11, provided it remains on the schedule.

THE CHAIRMAN: But is customs duty a service or is it a function or is it a tax? I think that is what he was trying to drive at.

PROF. KANYEIHAMBA GEORGE (Rubanda County East): Thank you Mr.Chairman, I very strongly want to support the Honourable Ndege's view that, we still put Item 4 as taxation without qualification. Mr. Chairman, it is true that, Local Authorities currently and in future, will be allowed to impose taxes on an enumerated subject, as has been the case. But in so doing, they always derive their authority from an Act of Parliament. And I think we should maintain that equilibrium that, any powers given to Local Authorities to tax should be derived from Acts of Parliament, rather than directly from the Constitution. Mr. Chairman, to allow them, to give them power to tax in the constitution, is likely to have a lot of overlapping in many areas which are of taxable incomes. Mr. Chairman, the responsibility of the Central Government in budgeting for the country, in giving an overall plan, for development is based on its power to tax. And I would rather that, this taxation is given as a responsibility of the Central Government and Local Authorities only charge taxes under Acts of parliament, rather than, from a power directly derived from the constitution. So, Mr. Chairman, I strongly support Honourable Ndege's view on this matter.

THE CHAIRMAN: But Honourable Kanyeihamba, supposing the Central Government does not give them power to tax. For instance, to impose whatever taxes they are supposed to impose. Because if you read this, together with the other provision if we approved it, it would run this way. That taxation of this is reserved for government. And taxation appearing under 11, is reserved for government. But any other taxation is available to Local Governments, provided there is an Act of Parliament enabling them to tax. So, there will still have to be an Act of Parliament, anyway. Because the constitution is not saying that, they can tax without Parliamentary approval. But the scenario is just what I have just described. That is how, I would understand it.

PROF. KANYEIHAMBA: Okay, Mr. Chairman, if that is the case, if there is that provisal that, Local Authorities can only tax under an Act of Parliament, then I would have no objection. What I am objecting to is for the constitution to give them direct power of taxation.

MR. MALIRO GASTON (Mwenge County North): Thank you, Mr. Chairman. Mr. Chairman, we tried to at least separate certain sources of tax for Local Government and Central government. And we have a list of certain taxes, which should be taxes for the Local government, when we come to the section on finances. But we were mindful that, income tax which comprises corporation tax, with-

holding tax and all that, is usually responsibility of the Central government. And also, the import and export which is down here. Therefore, if we just put taxation, it means we shall be depriving Local Government of having exclusive sources of their funds. And I do not see anything wrong, with this formulation. We have heard it here, it occurs in the constitution of 1962, it occurs in the constitution of Nigeria, and it is the same, in the constitution of America. I do not know what is wrong with it, having it here in our constitution, Mr. Chairman.

THE CHAIRMAN: Which one is this?

MR. MALIRO: I mean having this formulation of taxation of income tax profits and such other taxation. It is a formulation which is accepted, which appears in many constitutions.

THE CHAIRMAN: Do we really have to pursue this? Because anyway, I think the main worry was, should 11 remain as it is? Let us get there first, if we approve this as it is,subject to discussing the other provision, which was stood over.

MR. KATENTA APUULI: I thank you, Mr. Chairman. Why we put excise duty and custom in 11, it does not always mean, it is an imposition of tax, sometimes, it is a statement of policy. So, that is why we put it under commerce, because it is not always a tax, sometimes it is a statement of policy. So, it is relevant where it .

MR. BYAKIKA KASAJJA: Mr. Chairman, Item 4, says that, such taxes as arises by way of implementation of the functions and services in this schedule. Now, this Schedule is only talking of customs, possibly excise duties. But these other taxes which are coming up under Value Added Tax ,a sales tax, CTL and so on according to the schedule, they are not included. So, I do not know whether these are being left as responsibility of Local Government, or whether government considers them as income taxes. But I think they do not fall anywhere, in this schedule.

THE CHAIRMAN: Under Value Added Tax, would capital gains fall under income? Okay, I think Honourable Ziwa can give us his learned opinion on this matter.

MR. ZZIWA GEORGE (Kawempe Division North): Thank you very much, Mr. Chairman. Yes, I am trying to answer your question that, capital gains is a profit, is an income tax raised as a result of selling assets. When you sell an asset at a price higher than, what you bought it, then that results into a capital gain. That is exactly an income. Mr. Chairman, I just wanted also to elaborate on the argument that -*(interruption)*

THE CHAIRMAN: No, but before you do, what about VAT?

MR. ZZIWA: Yah, Mr. Chairman, that is also a profit gain, it is a difference between your purchases, and whatever you know, you add on and then you see it. It is a value added tax. It is also a profit tax. Infact it is another name being given to our present tax which we have, the tax we have on services. It is just another name.

THE CHAIRMAN: So, it would abolish CTL

MR. ZZIWA: Yes, it is going to abolish CTL.

THE CHAIRMAN: So, those will be covered within those. Okay.

MR. ZZIWA: Mr. Chairman, I just wanted to make a comment on 4 and 11. When you look at 4 closely, it is actually a taxation arising within the country. It is income from the artificial people, as well as income from human people. That is income tax. And profits also, are profits arising internally. But when you look at 11, this one is a foreign kind of tax, it is a kind of tariff, as we call it. You see, you find that, customs and excises, and other duties, these are kinds of tariffs, which arise out of relationship. Out of trade relating to external factors. So, I think, Mr. Chairman, it would be quite alright and safe to separate as shown in the schedule. Thank you.

THE CHAIRMAN: Where would you put excise, duty?

MR. ZZIWA: Well, excise duty, he could charge excise duty from external factors, as well as excise duty from internal. So, it is a tariff actually.

LT. COL. SSERWANGA LWANGA (NRA Delegate): Thank you Mr. Chairman. Mr. Chairman, I am seeking clarification. Why do we not leave these details to Parliament, and for our purposes use taxation? The details will be sorted out by the parliament. Because -*(interruption)*

THE CHAIRMAN: But you see, if you simply said taxation, it would mean that, you have said, unless the Central Government so wishes all taxes of whatever nature are a responsibility of Central Government, as it is put here. Now, of course we could define tax. What is a tax. A tax is an impose whether or not, you will get value for it, as distinct from fees, it is not? Fees are not mentioned. I mean when you pay school fees, it is a form of taxation for your education, but you get value or road license fee, but if they impose on you graduated tax, it does not matter. Whether there is a dispensary in your vicinity, you have to pay it, or whether you get medicine, it is an impose. That is the understanding I had myself of the difference between taxes, fees and rates. Now, here we are talking about taxes in two categories, but I think the difficult is, where do we place excise duty if we say, we leave 11 as it is fine. Because it is relating to external trade as well as, external relations. When it comes to number 4, it is talking about incomes and essentially revenue arising from internal sources and also functions related to this schedule. May be we could say, number 4, does it extend to excise duties, because of number 22, or number 23. Because we have to be very careful, you may find that, tomorrow people are arguing that, they are not liable to tax.

MR. KWERONDA RUHEMBA (Kajara County): Mr. Chairman, I thank you, very much. I have the feeling that, by phrasing 4 and 11, the way we have done, we seem to be limiting the scope of taxation. Because Mr. Chairman, taxation is a micro economic policy, and taxes are imposed to regulate economy, they are imposed to regulate inflation, and things of that nature. And I thought Honourable Ndege had a point when he said that, we should phrase 4 to read taxation and tax policy. And that would have taken care of even of 11. Such that, the tax or taxation policy should be a prerogative of the Central government, and this responsibility can be delegated to the Local government. But certainly, when you have Local Governments imposing taxes here and there, some of those taxes may be inconsistent with a policy. It may be inconsistent with objectives of the Central Government, and what the Central Government may be trying to solve.

THE CHAIRMAN: But I think, we had already covered that, except that we have not pronounced ourselves on that particular article which says, *"No tax shall be imposed except under the authority of the Parliament."* So that, even if you stated it here, that this is what the Central Government can do, whatever is left such as graduated tax, and such other taxes, they cannot be imposed unless Parliament has by Statute so provided, in which case, the Central Government can through the Parliament either increase that power or narrow it down or withdraw.

MR. KWERONDA RUHEMBA: But, Mr. Chairman, looking at the way these two are phrased 4 and 11, even the Central Government is limiting itself. Because there are taxes for instance, which other countries impose, taxes like, death duty, which for instance are not reflected here. So, taxes can continue to expand, but by limiting the Central Government , this way, you are doing it even a greater disservice. So, that is why I was saying that, we should open a tap and make it broad. By saying taxation and tax policy. But also to say that, the Central Government may refuse to pass an Act, to collect taxes. That would be getting its responsibility, because, certainly the taxes are here to stay and government will continue to levy taxes, and there is no way a country can develop without taxes. So, I do not see how a Central Government can say, that I am not going to pass a law that would empower Local Governments to collect the tax. Particularly, when Local Governments are going to make plans and they are going to plan by objective. The Central Government would be interested in seeing that Local governments achieve what they have planned for and what they have budgeted for. So, Mr. Chairman, I wish to request the Honourable Delegates to look at the narrowness of 4 and 11, and open it up, so that the Government does not tie its hands and tomorrow it comes to amend this schedule.

MR. KANIA OBIGA (Terego County): Thank you, Mr. Chairman. What I wanted to say is precisely what the last speaker has said. So, I would not repeat it.

MR. KAJARA ASTON (Mwenge County South): Thank you, Mr. Chairman. Mr. Chairman, I beg to support the Motion by Honourable Ndege

THE CHAIRMAN: There is no Motion on the Floor, I was gauging the temperature.

MR. KAJARA: I would like, Mr. Chairman, to support the view that, if we approve this 4 as it is,

it would have the effect of limiting the area of taxation. Because, Mr. Chairman, the way it is, taxation of incomes and profits mainly applies to income tax. There are other taxes, which Government would want to reserve, for itself. Also in view of the fact that, Mr. Chairman, we have seen and heard, Members of this Assembly, wanting to move Motions, to have say taxes collected at Malaba, or even Busia. To those districts. So, if we left it open, it would attract such people to say, that it is only taxation of incomes and profits that is reserved for government. In other words, they would claim customs duties, import taxes, and export taxes, arising from those districts. So, I would rather say, Mr. Chairman that, we can amend that clause by saying, taxation including income tax, sales tax, value added tax, import and export duties, CTL, excise duties and any other taxes arising by implementation of functions and services in this schedule.

THE CHAIRMAN: It will be running it into very dangerous ground by lawyers, when they come to interpreting that, they will begin to apply certain canons of interpretation. You find that, you have in fact narrowed it down further.

MR. OKULLO-EPAK (Oyam County South): Thank you, Mr. Chairman. Mr. Chairman, I think we are missing out an important element of this distribution of powers and responsibilities. Mr. Chairman, the intention of this schedule is to specify those powers, functions, duties or responsibilities that will be executed by the Central Government. Any other thing, which is not specified here, is assumed, will be executed by Local Governments. So, those who are thinking that, this is limiting Government in the scope of taxes available to a country are mistaking the fact that, the rest that do not appear here are assumed will be the responsibility of Local Governments. Mr. Chairman, it was a big problem, in our Committee 4, even to talk of taxation of incomes. Because graduated tax is also assumed to be a taxation of income. And yet, it is reserved for Local Governance. So, the appearance of the word, 'taxation of incomes' here itself is disputable. Because we have compromised and said, let it be here. Honourable Delegates, I am probably discussing this without having gone through the provisions we have, under the section on finances of Local Governments. In that, section, I think we also attempted to specify a number of incidence of taxes that should be imposed by Local Governments or be it under the general provision of Article 178. So, whereas I would have agreed with Honourable Ndege that, in a general formulation, by way of taxation and tax policy, would suffice. That leaves a lot of room and it does not leave us with the element of what we want for Local government. Which is called residual. We are saying, anything which is not here, is residual, and it is assumed. It will be the responsibility of Local Governments, Mr. Chairman. Unless we are not interested, in allowing Local Government, any responsibility in the areas of taxation, Mr. Chairman. I think it is implicitly that, there are two or three dimensions, in all the listing here. There is the policy and regulation element, and there is the operational and the delivery aspect in some of these items which are listed here. And when we discuss, we should bear in mind that, which aspect or which of these dimensions will be the responsibility of the Central Government. But it is very difficult to specify them here. In most schedules, we have looked through, they are even very brief. In fact, they would almost say, taxation as Honourable Ndege is stating, that we have attempted for our purpose to be more detailed. And I think this is more satisfactory, Mr. Chairman. I thank you.

MR. MALINGA IGNATIUS (Usuk County): Thank you, Mr. Chairman. Honourable Delegates, when Committee 4 discussed this issue of taxation, we saw the advise of both Central Government taxation people as well as Local Government taxation people. And we went through these quite thoroughly. Now, under the word income, anything you earn in cause of your life can actually almost be called an income, by whatever name called. There are very many taxes, which in fact are actually taxed on income. Sometimes, you could even argue that, your income is being taxed twice, under different levels of different taxes. So government always plays around, but basically you can interpret income to mean quite everything that you earn. As Honourable Okullo Epak has just said. Even poll tax or graduated tax, is infact a tax on your income although, you know they make sure that, every house holder pays. That is really what distinguishes it. Whereas with income, it is only those who are taxed income tax. So, really, I think it is adequate to say, taxation of income and profits. And in profits here, we shall include capital gains and such taxation as arisen by way of implementation of the functions and services in this schedule. So, if you look at 129, in cause of doing all those

things, the Central Government can impose fees and dues on rendering of those services, therefore as many areas of earning. Income has all those areas. In licensing fire arms, it will be able to take charge of this and that will be an income to the Central Government. In administration of copy-rights, parties and trademarks, corporation of companies which is there in number 6, the government will be able to collect registration fees and stamp duties. So, the sources to the Central Government, are not close to those sources indicated in 4 and 11 and indicated. With regard to 11, this covers all the import and export taxes, all the tariffs which are imposed on exports will be levied under 11, all the taxes which are imposed on imports can be levied under 11 as indicated.

Now, Honourable Delegates, we should also look at what we have provided for in Article 215, on page 24 where we set out exactly what the Local Government can subject to provisions of Article 178, which says: *"No tax shall be imposed except under the authority of an Act of parliament."* So, we have that general provision. So, even where the Local government is going to impose taxation, it will have to obtain a sanction of the Central Government. So, we have said, the local Government shall have power to levy, collect and pro-create taxes, and the taxes to be collected by Local Government shall include, but not be limited to rents, rates, loyalties, birth, marriages, death and stamp duties, Levies, fees, licenses, and personal taxes. These are just generally some of the areas, which the Local Government may tax. But all these, will be under the provisions of a law, made by the Central Government. Now, we have to be careful that, we provide funds for the Local Governments. Otherwise, the decentralisation that we are all so excited about will be still born. If we are giving powers and authority to the Central Government, we must make clear that, they have a sure source of income. It is true, they may expect to get something from the Central government. But over and above that, they must be able to raise funds on their own so that, each district can develop in the way it wants to do, and to the extent that, it is willing to exert itself. That is why, we must allow the districts to levy taxation. So, what has been provided for government is enough for 4 and 11, plus charging fees on all these other items which they are required to do, under Item 129. I think it is admirably done, and as I said at the beginning and I want to repeat. That this was done, having taken advice from the experts, from both Central Government and from the Ministry of Local government. I really implore Members that, on this matter of taxation, we shall approve this. And in any case, Parliament shall at all times, have a chance to review the matter, when they decide whether to grant sanction to a district to levy taxes on a particular item or not, they will indirectly be reviewing this matter. Thank you.

THE CHAIRMAN: Now, my only concern was, the areas which were clarified by Honourable Zziwa. That having been the case, do we really want to press this matter I do not see it getting us any further. Honourable Kagimu, what is it that, you would like to clarify.

MR. KAGIMU KIWANUKA (Bukomansimbi County): Point of clarification. Thank you, very much, Mr. Chairman. Mr. Chairman, for me I think if Members, Honourable Delegates had managed to look at number 29, I think we would not have had all these arguments. Because it says: *"Any matter incidental to the functions and services mentioned in this schedule."* This was providing for anything which would come in relation. Now, I remember, Mr. Chairman, when we were having that seminar in the Sheraton, you gave us an example in Australia, whereby, something had been provided for in the Constitution, something to do with a television and what. And then, a new item came up, television or telefax. And then the State wanted to claim that. But then, when it went to court, they said no. This is something to do with television. Then the court solved it. I think this number 29 caters for that. I think it caters for the fears of Honourable is it Ndege or Kweronda, someone on this side. Thinking that, what about taxation on death, I think if those taxes are introduced in our country in future, I think this will cover it under 29, if we pass it. And the only problem Yesterday, was that, when we passed Clause 3 of Article 214, where I put up my hand and it was not seen. But I had fears, before we passed this Article. I would appeal to the Chairman of the Committee to clarify Clause 3, of Article 214.

THE CHAIRMAN: But it was passed.

MR. KAGIMU: Well, we have not pronounced ourselves on the whole Article yet. That district councils shall have responsibility for any subject not falling under the fourth schedule to this constitution. When he clarifies that, in view of what I have said that, any matter incidental to the functions such

that, even if in future, anything comes up which does not under this Clause 3 so long as it is covered by Number 29. Even if it is not provided for, it is incidental. So, that would solve. Thank you, Mr. Chairman.

MR. MALINGA: Thank you, Mr. Chairman. Mr. Chairman, I am still concerned about the confusion that might arise. Let me first mention my understanding of the Schedule Item 4. Taxation of incomes, profits, and such taxation as arises by way of implementation of the functions and services in this schedule. That last part describes the taxation and limits it to what is related to item 129. For that, reason, I do not see why, in 11 they repeated customs and duties. Because really, that comes, under that general description. Because those are taxes or levies related to foreign external trade. Excise would come without it being named before. But, if that formulation is accepted, then 11, would just read, 'foreign relations and external trade.' Now, my second point, what Honourable Kweronda and Ndege raised, in my understanding is, are we allowing Local Governments, to have independent power on taxation? Even if there is danger that, it may interfere with taxation policy to the extent that, it affects the economy? I think that is a fundamental question, or do we say that, the Parliament shall always guide as in fact someone earlier said it that, Parliament will always pass a law anyway. So, would it not be sufficient to say as proposed later in Article 215. That subject to the other Article 178, the Local Governments shall be empowered to raise taxes. If need be, we can give the guidelines that have been given, but we say that, it is the responsibility of the Central Government. Taxation and tax policy is the responsibility of the Central Government. I was intrigued when listening to Honourable Maliro, that this is the same formulation as in the United States. In United States, I am sure, it is because of their federal status that, the Central Government was limited to impose taxation only on those aspects that were listed for them. Ours is high breed. I am reminded. So, this phraseology may not be as suitable to us as it may be in a federal constitution. The point that I am stressing is that, if we said, taxation and tax policy, is the responsibility of the Central Government, we are not prohibiting taxing by Local Governments. Because in the Constitution, we would have that Clause which says, Parliament shall by Statute, authorise taxation by Local Government. So, Mr. Chairman, I think if we could allow the amendment to be made, if Honourable Ndege is in position, now to do so.

THE CHAIRMAN: Okay, let us be more disciplined now in our discussion. I have surveyed the field, there is enough ground to sustain a debate of a limited nature. Because most of the arguments have been given anyway. Honourable Ndege, do you want to move your amendment?

MR. NDEGE: Thank you, Mr. Chairman. Just to add on what Honourable Mulenga has said, - *(interruption)*-

THE CHAIRMAN: No! But I think you would rather start with moving an amendment.

MR. NDEGE: Okay, I beg to move that, we delete 4 and insert 'taxation and taxation policy.'

THE CHAIRMAN: Is that seconded! Okay, you gave us your argument so, you be -

MR. NDEGE: There is only one more argument which I am just pushing in. The way it is, it is limiting that taxation to this schedule. Then you come to Clause 217, where we were telling the president, to ask Parliament to give grants from the consolidated fund to Local Government. Now, if we are only limiting government to just giving money for functions in this schedule, there will be no money to give block and equalization grants, that would be made irrelevant. So, since 4 and other articles are limiting taxation, just for the functions of this schedule, it is inadequate. And the other points have been given that, it will be chaotic for Government Policy. Because one would decide to put a tax on sugar, tobacco, another one would put a tax maybe on coffee, when there is already another tax on coffee. It is going to be chaotic. It will be more difficult to coordinate, since we are still in a very strict policy in order to especially control inflation and other policies which are very relevant to the successful government goal. We want to give everybody a chance to do anything, it will be dangerous at this time. Thank you.

MR. KADAMA (Butembe County): Mr. Chairman, I would like to add my voice to the support of Mr. Ndege's amendment. What the Honourable Mulenga has just said is quite important, that it would entail us to leave 11 to read external trade and foreign relations and delete the rest of that customs.

I wonder whether it would be agreeable, just for simply taxation and taxation policy arising out of the implementation or the rest of the schedule at number 4. That is my contribution.

THE CHAIRMAN: If you pass the Motion as formulated by Honourable Ndege, then there will be consequential re-phrasing of some of the paragraphs, particularly 11.

MR. WANENDEYA WILLIAM (Budadiri East): Thank you, very much, Mr. Chairman. Mr. Chairman, I agree with Honourable Ndege, but to me, in order to get 4 and 11, merged, it would be better.And I want Honourable Delegates to listen carefully. The formulation should be, taxation of incomes, export and sales taxes, excise and customs duties, and any other taxes as Parliament may consider appropriate. Mr. Chairman, that formulation takes care of number 4 and 11. So, that our schedule is even made easier. Because you will find that, excise and customs duties is all about foreign trade or foreign relations. And in fact the words, 'foreign relations' do not make sense at all, unless it is foreign trade. So, it would be better, Mr. Chairman, to take that formulation and then, you can merge 4 and 11. I thank you, Mr. Chairman.

MR. WACHA BEN (Oyam County North): Thank you, Mr. Chairman. I support Honourable John Ndege. However, there was an issue which was raised by Honourable Epak, which I think the House is losing sight of. This is the difficulty in making a distinction between taxation at the national level and taxation at the local level. I was wondering whether John Ndege and his supporters, would agree to the inclusion of the word 'national' to his motion. So, as we make a distinction between taxation and taxation policy at the national level, and those which are reserved for the Local Level. So that, the Motion will read: 'National taxation and national taxation policy.' Otherwise, I support the Motion.

THE CHAIRMAN: Honourable Ben Wacha, do you think it would give the same meaning if we said, we opened for with subject to this constitution?

MR. WACHA: That would be okay.

THE CHAIRMAN: Because if you are later on going to say, these are heads of taxation available to Local Government.

MR. WACHA: That, if he is subjected to other provisions of the constitution, then there is no problem.

THE CHAIRMAN: Because also, there is a general statement -

MR. WACHA: Because of the general statement of reservation of powers and functions to the Local authorities and other schedules I think which was intimated to, by Honourable Epak, which are reserved for the Local Authorities.

THE CHAIRMAN: Honourable Ndege, what do you say to that?

MR. NDEGE: I have not objection to that.

THE CHAIRMAN: This is because, if it is approved later on, as it is. The proposal into one. There is a provision relating to imposition of taxes by the local government.

MR. NDEGE: I accept that formulation.

THE CHAIRMAN: It is 215 - the Local Government shall have power to levy, to collect appropriate taxes and taxes to be collected by Local Government shall include but not exclusively that. Then he sets it out, in 215. If we go back and approve 178

MR. NDEGE: I accept the new formulation, subject to the provision of this constitution.

MR.PATRICK KASAJJA (Bulamogi County): Thank you very much Mr. Chairman. Mr. Chairman, I think there are a number of issues that we have not got clear on this taxation. Ndege's motion which is talking of taxation and taxation policy I think does not go far enough to explain the forms of taxes and the sources of taxes. In fact I wish to thank the Members of the committee who did a good job. After consulting the taxation experts and using also the taxation experts within this Assembly, they came up with I think this formulation. It is very meaningful because when we talk of taxation in any country, taxation policy is implied. You cannot just talk of a tax in any nation or government without there being a policy of implementing that tax. If you look at (4) as it is here, it is very clear and many Members have read it because it says taxation of income profit. Such taxation arises by way of

implementation of the functions and services in this schedule. That is so far clear, it is referring to this schedule as Members have already indicated. Now Mr. Chairman, if you relate or you compare (4) and (11), (11) is talking of the other source of this taxation which is foreign related. Now, this one here in 4 is mostly talking of the taxation which is internal here. Now Mr. Chairman, I would like to inform the Members that as a result of the information given by the experts on taxation and I think I do agree completely with Honourable Zziwa. He has made it clear here that any form of tax can be filled in either of these three. Either income profits or a service because some Members are again raising the issue that where do we place excise duty? Excise duty is a tax which is levied on goods produced internally, produced in the country and it is a task which is imposed as a result of realising the productivity arising from that industry. So productivity here is reflecting an element of profit or an element of income. Therefore to me, I find, when I read this thing carefully and at least as a person who has some experience in taxation, that actually this thing is very clear. Now, Mr. Chairman, I want to go to another point. The other point is to do with spelling out the residual powers and this one, Honourable Malinga has articulated it very clearly. The committee was careful in leaving residual powers to local government. This is in realisation of the powers that we are giving to Local Government. Therefore we have to leave them that element of taxing to raise enough income to run their activities. Therefore, that one is also clear. I would like to appeal to the Members that the issue of taxation policy should not divert you from the well intended objectives of these two taxes 4 and 11. They are very clear and I wish to support the way they have been formulated and I wish to reaffirm that they should stand part of this constitution.

THE CHAIRMAN: Let me ask one question before we proceed. If you take Honourable Ndege's formulation that taxation and taxation policy, how far does it go to indicate what government may tax and how far does it go to indicate in view of the wording of 215 how far the districts may go in taxation? You will find that you are creating an area of overlap there really.

MR. BIDANDI SSALI (Nakawa Division): Mr. Chairman Sir, the debate we have had so far was even four, five times longer in the committee and we settled with 4 and 5. I think it was Honourable Malinga who pointed out to us that the overall constitutional provision in taxation is 178. So that even if we entrench the powers of taxation for the Local Government, even those will be subject to the general policy as will be laid down by Parliament. Therefore Mr. Chairman, Honourable Ndege's formulation improved by Honourable Ben Wacha and yourself takes care of exactly what the committee came up with subject to provisions of this constitution, taxation and taxation policy. Because that allows for the entrenchment of the right of local government to levy taxes in 215. At the same time protects them against the central government coming in to withdraw this power or the other, because it will have been entrenched. The point of general policy by Parliament is not necessarily to say we withdraw.Rent now will be by the central government, no. It will be that rent can only be levied under these circumstances and not beyond those within these limits and not the others. Otherwise the entrenchment of the power of local government really means that the rent is mine. You can guide me on the levels for example or areas which are sensitive in view of the government which should not be touched for the time being or for whatever reason. Therefore, in my view Mr. Chairman, Honourable Ndege's amendment takes care of both the interests of the central government and the local government. Thank you.

MR. MASALU MUSENE (Manjia County): Thank you Mr. Chairman. The formulation of Honourable Ndege just with reference to taxation in general would be very dangerous and would negate the principle of decentralisation. First of all, the main sources of finance in any country are basically export taxes, import duties, excise duties and pay as you earn, maybe you can add on company tax. Now, we have in our formulation in committee four provided for all this for the central government and we are saying that let the rest be taken by local government. Because if you just say taxation as a whole and that is why we avoided the concurrent list. We avoided a situation where the central government would under the pretext of a concurrent list now try to interfere from time to time to take away even the little that the local government should have. So it would be very dangerous even if we say subject to the provisions of this constitution and you say taxation and taxation policy.Maybe what we can do is to include taxation policy for the central government but then we cannot say taxation because there will always be a

lacuna. There will always be room for the central government to interfere to take away even the little which the local government has. In fact it would be giving with one hand and taking with the other and therefore decentralisation would be meaningless. Some people have argued that in United States and Nigeria, there is a clear demarcation because those are federal States. But we are saying decentralisation is federalism at district level and it must be seen to be meaningful. So we cannot talk of decentralisation and then at the same time take away all the powers under the pretext of general taxation to the central government. Furthermore Mr. Chairman, if Members can look at page 144 of the draft constitution by Odoki, they will realise that what the committee did in relation to 4 and 11 was to put the same items as they were in the draft constitution. There is nothing new. So what we did was in conformity with what is in the Odoki Report and furthermore, if I may refer Honourable Delegates to article 216 which is on page 25 which we shall come to, we have provided for finances of local government and we have under 216 (1)(a) and (b), we have provided for a situation where the government will come up with balancing Act, the central government will always come up with a way because (a) provides as follows: that Parliament shall by law provide for the taxes that may be collected by district council for or on behalf of the government for payment into the consolidated fund and (b) for a district council to retain and so forth. So this is a situation where the central government will always have power anyway to balance its interests as opposed to those of local government. So they fear that the central government might lose sources of income should not stand and therefore, I pray to Honourable Delegates that we leave the formulation as it is by the committee which is in conformity with the draft report but we only add taxation policy so that there is room for local district councils also to have sources of income if decentralisation is to be meaningful. Thank you Mr. Chairman.

THE CHAIRMAN: Honourable Delegates, we have taken quite a bit of time on this. My reading of the formulation by Honourable Ndege as improved upon by Honourable Ben Wacha is that you are saying that you must take note of 178 which says Parliament must pass an Act before any tax is imposed. Two, you must take note of 215. That is if we pass Clause 2, that local government has power to levy certain taxes specifically mentioned. Other areas available to government, that Parliament could in fact by law allocate. So that formulation to me takes note as it was pointed out by Honourable Bidandi Ssali of the fact that there is in provision a proposal to reserve to local governments areas of taxation in the Constitution. Subjecting this provision to that takes note of that. Similarly, it takes note of the general provision that even where we have reserved for local government, Parliament must come in under 178 to authorise the imposition of death duties, marriage fees and so on. That is how I understand it but I think we should now pronounce ourselves on it. The formulation by Honourable Ndege is that we replace 4 with: *"Subject to the provisions of this constitution, taxation and taxation policy."* Let me put the question. Now I can see a member of the Revenue Authority, some tax masters feel unhappy.

MR. COSMAS ADYEBO (Kwania County): Mr. Chairman, I am asking the Chair to clarify to me and maybe to my Colleagues whether after here, we are going to concern ourselves with the concurrent legislative list. I am saying so Mr. Chairman because if you compare what we are doing here with other constitutions, you find that in the legislative powers, that is the exclusive legislative list of some constitutions, they make provision as is made in our Fourth Schedule Article 214(4). For example, in the Nigerian Constitution, in their legislative powers and under the exclusive legislative list they provided for taxation of incomes, profit and capital gains. When they dealt with the concurrent list, they again provided for collection of taxes where they involved the federal government and also the State. So I am asking whether after this list, we are also going to involve ourselves with concurrent list. So that this question of taxation should not be just left to the central government because they are going to share in a similar manner. If that is the case, then I will say that the provision of Article 214(4) should stand. This can also be catered for in the concurrent list where we shall allow local authorities also to be given some powers to raise taxes Mr. Chairman.

THE CHAIRMAN: You see, what I explained, I understand there was the question of a concurrent list which was not popular in the committee. But the provisions I was pointing out were that if you take the formulation of Honourable Ndege and as improved by Honourable Ben Wacha and then you apply those to the recommendation if you so approve it at 215. Which in this case gives to local

government also direct power to levy taxes in certain areas. Then you are saying that actually those areas should when national government is exercising its power of taxation and taxation policy, it should not touch them. And even if the central government may not touch them, they may give them guidelines but not take them away as provided for under 178. If we pass it there will be powers for the central government and powers for the local government. Subject to another provision which if you pass under 216 allows government to delegate to the districts areas of taxation and then they share the taxes.

MR. MUSUMBA ISAAC (Buzaaya County): Mr. Chairman, thank you very much. Mr. Chairman, I have been trying to catch your eye. This is based on the fact that I would not want us delegates to pronounce ourselves on this article without the benefit of some knowledge that I would want to share with the delegates. Mr. Chairman, I want to apologise that I came in a little late but if I had been here earlier, I would probably have made notes to make an amendment like that one of Honourable Ndege as improved. Whatever happens in this constitution, Mr. Chairman, we always have to know that the evolving of policy at a macro economic level will always be with the central government. The local governments will continue to tax as authorised by the taxation but it will be within the general framework of the macro economic direction of government. For that reason Mr. Chairman, and also for the reason that when you say subject to the provisions of this constitution. With taxation generally you still leave room Mr. Chairman, to ensure that both the central government and Parliament will guide all the other local governments in the general direction of what is the taxation drift as it were. So it is based on that reason Mr. Chairman that I entreat Delegates to support the motion as it stands as proposed by Honourable Ndege. Thank you Mr. Chairman.

MR. MULENGA JOSEPH (Democratic Party): Thank you Mr. Chairman. Mr. Chairman, I wanted to respond to Honourable Musene specifically. The situation we have if Article 215 passes is that we shall have a reserve list for local government so that we are assured that local governments will not be denied of tax base. It says and it is mandatory, local governments shall have power to levy, collect and appropriate taxes. The taxes to be collected by local governments shall include but not be limited to the following, rents, rates, loyalties and so forth. So there is that assured source of income for local governments but it can be more. From the explanation that the chairman of committee four gave, there is no need to create another list for central government. Once we have assured local governments of this plus the fact that central government may delegate some of the powers in this schedule, the functions and others, what Honourable Musene was worried about is catered for. Enough has been said for the amendment. I thought I should stress this point, that we are not in any way with this amendment by Honourable Ndege depriving local governments of source of income. It will still have power to tax on specified areas plus more that may be delegated. Mr. Chairman, I would urge Members to support the amendment.

THE CHAIRMAN: I think let us decide on this one. Let me put the question on Honourable Ndege's amendment.

(Question put and agreed to)

THE CHAIRMAN: So 4 is amended as provided by Honourable Ndege. Shall I take it that this automatically leads to some consequential readjustments on 11? So that 11 reads,foreign and external trade but we shall come to it anyway. Okay, number five, I do not have to read it anyway since you all have the text there. Item 5, item 6, item 7 -

MR. KATENTA APUULI: Thank you Mr. Chairman. Mr. Chairman, we have been requested by committee number one that we stand over Item 7, Item 8 and Item 24. The Chair yesterday accepted this request. So I would like to request you that we skip these items. We shall revisit them when the other committee is ready with its recommendations. I thank you.

THE CHAIRMAN: Okay, item 9. Yes, Honourable Higiro is worried about some monuments or something?

MR. HIGIRO SEMAJEGE (Lwemiyaga County): Mr. Chairman, for Item 10, when we talk about monuments, antiquities, archives, I think Mr. Chairman, we should know that some of these monuments and antiquities are in particular places. The local governments where they belong, cherish them even more and I think they should have some

right over them. We should not simply brand them exclusively under the central government. While government can have action to them, I think we should not remove them entirely from the local government where they belong.

THE CHAIRMAN: But I thought the reference is to national. I know he is worried about *bigo byamugenyi.* Honourable Higiro, when we inspected *bigo byamugenyi,* we found that it was going to be very difficult for the local governments alone to even make them accessible, although the Masaka local government was very helpful. It depends on how they are classified. Isn't it? I do not think anyone quarrels that Kasubi tombs would be classified as national although to some degree yes because it is the total culture of Uganda.

MR. HIGIRO SEMAJEGE: Yes, I do not deny that Mr. Chairman but the word that is used is that, these are things which will be exclusively for the central government whereas there should be some acceptance for the local.

THE CHAIRMAN: No, you should read the whole thing. It is saying, national monuments, antiquities, archives and public records as Parliament may determine. So if Parliament says *bigo byamugenyi* is not a national issue-

MR. HIGIRO SEMAJEGE: No, it will be a national issue but still I accept this because I hope people will beg Parliament to defend them Mr. Chairman. I accept.

THE CHAIRMAN: Okay, number 11, we agreed that it should say foreign relations and external trade.

MR. WANENDEYA WILLIAM (Budadiri East): Mr. Chairman, although the majority have decided on number 4 as brought forward by Honourable Ndege, I am of the view that we could have combined number 4 and 11 into one sentence. Mr. Chairman, you find that export and sales taxes are local. Then excise and customs duties, partly customs is foreign and excise is local. So, combining that with any other taxes as Parliament may consider appropriate in my view, cuts out number 11. So I would request the indulgence of Honourable Delegates to re-think about what has been passed and whether that could be merged so that we do away with number 11 Mr. Chairman. Number 11, the way I had proposed it and I read with your permission Mr. Chairman. *"Taxation incomes, export and sales taxes, excise and customs duties and any other taxes as Parliament may consider appropriate."* That in my view, takes care of number 4 and 11, we can do without it, without making the list longer than it would necessary be. As some other Members have proposed and Honourable Masalu said it, you go to page number 24 sub-section one where local governments can tax. It takes care of that if Parliament agrees. So I would request Members to consider that, decide on it and we cancel out 11. I thank you Mr. Chairman.

THE CHAIRMAN: Honourable Wanendeya, we cannot cancel out 11. What we have done is narrowing down 11, because 11 had two legs in its previous form. It had pure foreign relations like the job of Honourable Rugunda and then it went on to say external trade, the job of Honourable Kaijuka. Then it went on to talk about taxation. What has happened is that after amending four, we have agreed to reduce 11 to two things only, foreign relations and external trade. We deleted customs and duties as Parliament may consider appropriate so that we are left now with only that. Number 4 is now taking care of all of them by virtue of the amendment. Agreed? Number 12, I can see Ambassador Obua Otoa.

MR. OBUA OTOA (Erute County North): Thank you Mr. Chairman. Mr. Chairman, I am just wondering whether we need 12 separately from 11. Because there is foreign relations, external trade which we have agreed about. In 12 we are talking about the regulation of trade and commerce with foreign countries which I thought would have been covered in 11. If we want to expand 11, we could say foreign relations, external trade, the regulation of trade and commerce with foreign countries and so on. A matter was raised about trade between districts. I do not know whether we cannot formulate these two into one comprehensive provision.

THE CHAIRMAN: I thought that we were moving away from regulation of trade between districts. When I was a Minister for Cooperatives, we used to have a regulation which said that you could not transport coffee for processing between districts unless you got written permission from the Minister. We thought it was ridiculous because if you had no capacity in Kamuli, there was capacity in Mukono just across the river.

MR. OBUA OTOA: I agree with you Mr. Chairman. I had the same experience as Minister of Cooperatives as well. So Mr. Chairman, I am moving that we delete this thing about trade between districts and we amalgamate 11 and 12 to say foreign relations, external trade and the regulation of trade and commerce with foreign countries. So that we do not talk about regulation of trade between districts.

THE CHAIRMAN: Honourable Obua Otoa is suggesting that we revisit number 11 to combine it with number 12 so that we treat foreign relations, external trade and regulation of trade and commerce with foreign countries.

MR. KAGIMU: Thank you Mr. Chairman. Mr. Chairman, what is the difference between external trade and trade with foreign countries? I think the whole thing is redundant. You have destroyed the last part when you say that you are moving from preventing districts from cooperating in trade that when you have coffee in one area to transport it. We should delete number 12 completely because it is redundant. We have already covered the foreign relations, external trade in number 11. So Mr. Chairman I move to delete number 12. I move Mr. Chairman.

MR. MUSUMBA: Mr. Chairman, I have another view. Supposing we left foreign relations in number 11 alone and then in number 12 we talk about external trade and commerce. Reason? Because foreign relations, when you put it together with external trade, it could give the impression that foreign relations must or will always be in relation to external trade. Foreign relations is an item in itself relating to diplomacy. I have pointed out, it has a different connotation when we are talking about external trade. So what if we retain 11 and 12? 11 deals with foreign relations and 12 deals with external trade and commerce.

MR. OBUA OTOA: Mr. Chairman, I think I would agree with the Honourable Kagimu that we simply set foreign relations and external trade as quite sufficient. There is no need for us to talk about regulating trade and commerce with foreign countries. In any case, foreign missions have got several assignments, they have got commercial attaches and that kind of thing. You have got a department for external trade within the Ministry of Foreign Affairs. So Mr. Chairman, I agree that we should eliminate 12 altogether and simply say foreign relations and external trade.

THE CHAIRMAN: But commerce internally, are we going to say that commerce shall be absolutely free?

MR. OBUA OTOA: If you must include commerce, then maybe you could say foreign relations, external trade and commerce.

THE CHAIRMAN: But that is going to be external commerce. But supposing you simply said under 11, foreign relations and external trade fullstop. Number 12, regulation of trade and commerce.

MR. OBUA OTOA: Without putting foreign countries there?

THE CHAIRMAN: And between districts, you just say -

MR. OBUA OTOA: Yes, we take away 'between districts' and say 'regulation of trade and commerce,' fullstop. And the other one also says foreign relations and external trade. I think Mr. Chairman, that would be acceptable.

THE CHAIRMAN: Honourable Kagimu, everybody seems to be in that direction. But you seem to be concerned.

MR. KAGIMU: Mr. Chairman, I will not be very comfortable if you restrict foreign trade too much. I have read in the papers just recently when the KCC (Kampala City Council), struck a deal with an American or Arab country to give it 500 million dollars and also Rakai was negotiating with Denmark. I do not remember the details but it was in the papers. So Mr. Chairman I feel that if you say regulation of trade and commerce, you are frustrating the districts. Some districts may want to negotiate deals with foreign countries.

THE CHAIRMAN: No, it is not saying you do not go and transact. It is saying something else. Honourable Obua Otoa, could you explain? Could you please assist us? I think the Honourable Member is thinking that the word 'regulation' means stopping trade at some border between Masaka and Rakai or something like that.

MR. OBUA OTOA: Mr. Chairman, I think he is mistaken in that impression. Regulating trade and commerce does not mean regulating trade between Masaka and some other country. It does not mean that at all. In any case, the central government can regulate it,that it is permitted.

THE CHAIRMAN: It is actually requiring that you may want to get a permit. Or that circumstances arise where they say, do not use this route. Those carrying so many tons should go through this point.

MR. OBUA OTOA: Yes, exactly Mr. Chairman.

MR. BIDANDI SSALI: Mr. Chairman, this information is for the benefit of Honourable Kagimu. That it is not true that Kampala City Council or Rakai negotiated directly. They did negotiate after approval of the central government. Thank you.

THE CHAIRMAN: Okay, what is being proposed by Honourable Obua Otoa is that you should read number 11 to be as it was, foreign relations and external trade. Then number 12 should be the regulations of trade and commerce, fullstop. Agreed. Number 13, number 14 -

MR. MUKWAYA ABBEY (Busiro County East): Thank you very much Mr. Chairman. I do not feel very comfortable with a paragraph stopping at national elections. I want the chairman of the committee to explain to me how the other elections of other local governments are going to be carried out. I would be very comfortable if the clause read 'national and local elections,' or something like that. Can the chairman please explain to me? Thank you Mr. Chairman.

MR. KATENTA APUULI: I thank you Honourable Chairman. Honourable Mukwaya by saying national elections, we meant that the country should have one electoral commission and any elections happening should be regulated by that electoral commission. You can add 'local' or you can take the word 'national' out. Maybe 'national' and 'local' would be the better formulation.

THE CHAIRMAN: I do not think we should really debate that. If we say national and local elections. Okay, agreed.

LT. NOBLE MAYOMBO (NRA Delegate): Thank you very much Mr. Chairman. Mr. Chairman, I would seek some clarification from the chairman of committee four because I looked through the schedule. Mr. Chairman, the very important service to our people which is electrification was not provided for, either to be handled by local government or the central government. And Mr. Chairman, I think it is very expensive. It cannot be handled by the local government.It goes a long way to liberating our people from muscle energy. So I feel that we could amend this provision so that it provides for energy policy and not only nuclear energy. Thank you Mr. Chairman.

MR. KATENTA APUULI: Mr. Chairman, I would appreciate if we can go along with Honourable Mayombo's suggestion that it should be energy policy. Why we included nuclear energy is because of the problems attached to this highly environmentally dangerous item called nuclear. When you talk about energy policy, I would like to draw the attention of Honourable Delegates as to the current situation. The current situation in Uganda today, nobody may generate power with a Honda engine without permission of UEB. That is how ridiculous the law is. If you want to generate biomas, you must go and get government permission, if you want to generate solar energy, you must go and get government permission. We thought that the only area that needs to be particularly regulated is this dangerous area of nuclear energy. All the other energies should be free because if you put it here, it means you perpetuate the current arrangement under UEB where no power may be generated even for a wedding, even where power is not supplied in that area. We went into great length discussing this matter and because energy now is getting privatised, it is not necessary for government to have to control all aspects of energy.

THE CHAIRMAN: What about the regulation?

DR. KABAYO PATRICK (Kassanda South): Thank you Mr. Chairman. Mr. Chairman, I was also puzzled by the inclusion of this term 'nuclear energy' here. When we talk about nuclear energy or atomic energy, usually the inference is with respect to nuclear power or atomic power drawing in such fuels as uranium. But Mr. Chairman, there are many other but less known applications of the term 'nuclear energy' which would render inclusion of the term 'nuclear energy' in this schedule a

little curious. Mr. Chairman, if you are doing experiments with radioisotopes, there will be nuclear energy involved and the usage of gamma radiation sources like cobalt are all nuclear sources. When you use multi-purpose commercial radiation facilities for sterilization, these are all energy related things. I do not know whether you in that respect expect the government to do all those for you. I do not know why this was included here. If it is a problem of the safety, I think the matter of safety would have been addressed separately under for example, national safety or whatever. But the item of nuclear energy in itself is too vague. I feel that the problem that was raised, the reason it was included here is because of the aspect of safety. Safety could be listed on its own if that was the matter that was intended to be addressed. Thank you Mr. Chairman.

MISS. BYANYIMA WINNIE (Mbarara Municipality): Thank you Mr. Chairman. Mr. Chairman, I would go along with Noble's amendment to say nuclear policy and clarify to the chairman committee four that policy does not mean the same thing as regulation. You can have a policy which allows for a free control and utilisation of the resource. For example, in the United States their energy policy is such that there are almost no limits to the use of fuels. So the policy itself can be that of privatisation. So when you say policy, you do not exclude privatisation and you do not imply State control necessarily. Secondly if the intention of putting there nuclear was to limit the environmental hazards from the use of nuclear power, other sources of energy also hazardous could be used especially here in Uganda. For example we have potential thermal energy. This too has potential hazards to the environment or to the lives of people. That too, if it were to be tapped there would need to be a policy made by the central government and not by local government. Because its consequences would go beyond the borders of the local government even though the source would be within one local government. At the same time even fuel itself, we know that the intention of forest has enormous consequences for those who live within those forests and those who live beyond in terms of climate change. So again, we find that in fact in general energy policy should be made by the central government. I would like to say that to improve on Noble's amendment, let us say energy policy and not nuclear. I am sorry I do not remember whether I said nuclear policy or energy policy. But energy policy would be better because that will take into account all the various sources, the possible consequences for safety, for environment and for human settlement. I thank you Chairman.

MR. SEBI HAROUN (Koboko County): Thank you Mr. Chairman. Mr. Chairman, although I am a Member of committee four, this point actually seemed to have slipped our mind where we restricted nuclear energy. On further consultation with the CA research desk we found that if we specified energy to nuclear energy, that would leave room to other sources of energy which would be equally dangerous. Mr. Chairman, society is dynamic, knowledge grows and scientists work round the clock. They may later find from research that there are more dangerous sources of energy than nuclear energy in future. For instance, several years ago, not many of us had heard of the use of solar energy but today we have solar energy being used in various spheres of life. So I would go with Honourable Mayombo's amendment to say that we say it would be all encompassing and it would take care of energy policy. It would be all encompassing and it would take care of future inventions in the field of science. Thank you very much.

THE CHAIRMAN: Agreed? Energy policy for number 15.

MR. AGGREY AWORI (Samia Bugwe North): Mr. Chairman, I would like to add to more items on item 16, that is meteorology and telecommunications for the following reasons Mr. Chairman. Telecommunications frequency allocation can only be done by the State after consulting with ITU in Geneva. Meteorology is very expensive for local administrations to carry out or to undertake.

THE CHAIRMAN: Yes, Honourable Rwabyomere, how do you construe the present formulation?

MRS. RWABYOMERE JOAN (Presidential Nominee): Mr. Chairman, before Honourable Awori raised this addition, I had some information to give. If I have to comment first on his formulation, really we classify all that he is saying, air, rail and road transport. But that was not my proposal. I was going to seek the indulgence of the chairman of committee four Mr. Chairman, to give some information about the current practice which current practice is likely to continue in the future.

Although they have listed civil aviation and aerodromes here, the current practice is to the contrary. Currently, the civil aviation services are not exclusively offered by government. Also the same with aerodromes because only two weeks ago, we commissioned a private aerodrome in Bundibugyo, we had also commissioned an aerodrome earlier on in Kajansi and also there is the area of general aviation where you allow private operators to offer services.

THE CHAIRMAN: But you had commissioned those aerodromes and you have to license those people who fly.

MRS. RWABYOMERE: Yes, Mr. Chairman, I am continuing. What this means is that the duty of government remains regulatory to ensure standards as regarding safety, security, regularity and efficiency. For that reason Mr. Chairman, I am going to propose that 16 reads as follows: *"Railways, trunk roads and regulation of civil aviation and aerodromes."* But then, if we have to consider Honourable Awori's intervention Mr. Chairman, which I had not considered, then we list air, rail, water and road transport and we see how we formulate it. Thank you Mr. Chairman.

THE CHAIRMAN: If you say that, we can simply say, transport and communication policy.

MRS. RWABYOMERE: Yes Mr. Chairman. I concede to that one.

MR. LUKUMU FRED (Buliisa County): Thank you Mr. Chairman. Mr. Chairman, my concern was about leaving out waterways. I am glad Honourable Rwabyomere has mentioned it and we have appropriately summarised all this into transport and communications which certain covers water. Thank you.

MR. AWORI: Mr. Chairman, then I beg to move that I make it independent and insert, 'meteorology and radio communications.'

THE CHAIRMAN: What I had suggested was transport and communication policy. My assumption was that there the government can say by virtue of our policy, the central government is restricted to trunk roads or by virtue of decentralisation arrangements. Unless we specifically say responsibility for trunk road and then we go into specifics. But do we want to leave government only on policy or do you want them to have actual functional responsibility?

MR. AWORI: Mr. Chairman, I still insist that somehow meteorology must be assigned either to local administration or to national government. I am recommending that given the cost of undertaking this particular exercise, we assign it to the central government. So if it cannot fit in the current arrangement, then we give it independent status, Item number 17. Mr. Chairman, the matter of radio frequency allocation, no matter where we put it, it still is an exclusive preserve of the central government because ITU will not recognise say, 'Nile Broadcasting Corporation in Tororo.' Only the Ministry of Information or Telecommunications of the central government can allocate frequencies to a radio broadcasting station or to any other system. So we must assign this to a particular authority and in this case I am recommending that these two functions should be assigned to the central government within this amendment or a separate amendment. I would like to move an amendment to that effect with your permission Mr. Chairman.

MISS. BYANYIMA: Point of information. Thank you Mr. Chairman. Mr. Chairman, I would like to inform Honourable Awori before he moves his amendment that radio communication is only one type of communication that is used. There are many types of communication. There are radio systems, there are the VCR systems, there are so many systems. It is not useful for us to single out radio communication and give it highlight and say this is a role for central government when there are so many other forms of communications used in aviation and other systems. Thank you.

MRS. RWABYOMERE: Mr. Chairman, I would really recommend that we move with your advice of concerning government with policy. Like Honourable Byanyima has already pointed out, the aspects that Honourable Awori would want us to list are just a few aspects of communications like meteorology and radio. So we cannot run into the danger of listing all the aspects of transport and communications. I would therefore recommend that we have transport and communication policy. So Mr. Chairman, I beg to move and I beg Members to support. Thank you.

MR. AWORI: Mr. Chairman, as much as I agree that radio communication is just one phase of

communications, it will be under telecommunications. It is absolutely new to me as of this afternoon that meteorology is communications. Meteorology has never been communications, weather forecast is not communications, research in weather is not communications, predicting weather conditions is not communications. You may use communications to determine these aspects of weather conditions but the principle of meteorology has nothing to do with communications. Communications is just an aspect of determining meteorological conditions. So Mr. Chairman, I would insist that meteorology should not be treated under communications.

MR. PINTO EMMANUEL (Kakuuto County): Mr. Chairman, thank you very much. I just want to appeal to Honourable Awori not to labour the point very much that the advice he is receiving from Honourable Byanyima and Honourable Rwabyomere is professional. He might want to refer to item 7 where we talk of land mines, mineral water resources and environment and that weather would be well catered for under the environment.

MISS. BYANYIMA: Mr. Chairman, to take care of his worries because sometimes telecommunication is not listed as communications. We could say transport, communication and telecommunications policy to cater for his concern. Thank you.

THE CHAIRMAN: What will be the communication he is referring to here?

MISS. BYANYIMA: Mr. Chairman, because of many advances in the fields of Telecommunications and also computer advances, they often make distinctions, where communications include the more regular ones which we know. Like communication through transport, communication by computer networks, whereas Telecommunications is the communication through air waves, like telephone, like television and satellite and so on. So, they do make a differentiation, occasionally.

THE CHAIRMAN: But Honourable Byanyima, you answered it yourself. You said, telecommunications is like communications through - *(Interruption)*

MISS. BYANYIMA: Of another kind, yes, but it is such a wide field that now it is often mentioned separately. I thought as a compromise, we could put it that way.

THE CHAIRMAN: I do not think it is necessary, we would understand it that communications includes the various forms of communication. And when it comes to implementing that policy, it is a question of saying who should be responsible, the word 'privatisation,' and so on. That is why I was saying transport and communications policy.

Agreed, NO. 17, do you want people of Kinkizi to be counted from the -

DR. KINYATA STANLEY (Kinkizi County East): Thank you very much Mr. Chairman. There is something missing in this Mr. Chairman. That is the population itself, because here, they are concerned with counting people and statistics and so no. I would like to introduce the Population Policy, National census and statistics.

THE CHAIRMAN: But how is it different? Honourable Malinga.

MR. MALINGA IGNATIUS (Usuk County): Honourable delegates, we spent a couple of years trying to establish the number of animals in this country. It was a very important census, I am sure Honourable Miyingo-Kezimbira is now looking through those statistics to find out what he can do for the country, having got that information. Where we are saying national census, we are saying, we shall have national census for population and you can have more than just population. You can also find out what energy the population is using, you can also find out what kind of housing the population is living in, rather than just a head count. But we can also have livestock and many other things as may be required. How many people have telephones, how many people have what? So these are all censuses and I think we should keep it as wide as that, because you cannot plan without that vital information. That is why we want to have it.

THE CHAIRMAN: So, it should remain as it is. Okay, No. 18, No. 19, No. 20, No. 21. Yes Honourable Awori, No. 21.

MR. AWORI: Mr. Chairman, I tend to think that the words after Education Policy are unnecessary. My view is that, when we talk of Education Policy, it includes all these other things which have been added, standards and post primary institutions. I am wondering why the committee thought of adding this. In my view if you talk of Education Policy, that cover everything.

THE CHAIRMAN: Honourable Katenta Apuuli, do you have....

MR. KATENTA APUULI: I am being told to give no objection, I was willing to give no objection, Honourable Chairman.

THE CHAIRMAN: Agreed?

MR. SAM KUTESA (Mawogola County): Mr. Chairman, I thought that the reason for putting in post primary institutions was because of the intention to leave Primary Institutions under Local Government. So, it seems to me that there continues to be a need for that distinction.

DR. NYEKO JACK (Presidential Nominee): Thank you, Mr. Chairman. I was going to answer, I think when we say Education Policy, all the other legislation will come under that. Even Primary schools are to be left to the respective districts. It will still be spelt out under this legislation. So, I do not think it is necessary to include the standards, post primary Education. I support what Honourable Awori put forward. Thank you.

THE CHAIRMAN: We knock off the rest. No. 22, No. 22, No. 24 has been stood over, No. 25 - National Research, No. 26, Honourable Malinga.

MR. MALINGA: I think yesterday it was mentioned that in control of epidemics, we should also be discussing control of natural disasters.

MR. OLEGA ASHRAF (Aringa County): Thank you Mr. Chairman. Under 26 I had the same concern as Honourable Malinga, natural disasters.

MR. KATENTA APUULI: Mr. Chairman, I would like to inform Honourable Olega, especially those in my committee, that we did provide somewhere else in the Constitution a Commission to deal with National disasters. I think that it is necessary to have to mentioned it here, when there is a specific organisation we have sought to put in the Constitution for it.

THE CHAIRMAN: I think that was a wrong point. If we have already allocated that function to a Constitutional body, then it has to follow that Central Government will have to make certain facilities available as indicated in the Constitution itself. Honourable Mukwaya, you disagree?

MR. MUKWAYA: Thank you Mr. Chairman. Mr. Chairman, I want to disagree with that proposal. For instance, there is a whole Chapter on Judiciary, but here under 19, we have provided that the national judicature will be the responsibility of the Central Government. Why do we not in the same breath provide for national disasters as a specific item? Thank you, Mr. Chairman.

THE CHAIRMAN: Are there such things as national disasters and non- national disasters, or natural disasters?

MR. LOOTE OGWEL (Moroto Municipality): Thank you Mr. Chairman. I also insist that natural disaster be also included as part of the responsibility of the Central Government. Some of these topics have not been allocated in the part of the Constitution. So, as a matter of emphasis, and responsibility, let us include the natural disasters.

THE CHAIRMAN: Honourable Katenta Apuuli, can you help us so that we move quickly?

MR. KATENTA APUULI: Mr. Chairman, why we were requested and we did agree as a committee to request this Plenary to approve setting up a Commission to deal with emergencies and national disasters, was the poor response of the Central Government to natural disasters. Now, our attention was drawn to the fact that, when Central Government is left to deal with national disasters, the response is poor. Now, you are trying to take us back to the same situation that we are trying to cure. That national disasters be the responsibility of the Central Government. We were seeking to set up a special Commission to deal with all those disasters, so that we do not have to wait for the Central Government to move. However, we urged Central Government to provide funds for it.

MR. MAIKUT CHEBET (Kween County): Mr. Chairman, first of all, I see no harm if we entrusted the Central Government to take care of natural disasters for the country. Although we have already provided for it elsewhere in this Constitution.

Secondly, Mr. Chairman, under 26, I would like to suggest that we include the control of noxious weeds, for example, the water hyacinth falls under this category and pests.

THE CHAIRMAN: It will come under environment if we pass the ....

MR. MAIKUT: Mr. Chairman, when contrary avert epidemics, naturally, we have got to cater for this other kinds of elements.

THE CHAIRMAN: Can I suggest that we simply say, control of epidemics and disasters, because attaching the word 'natural,' also can be narrowing. In Japan, some gas caused a disaster. Order, order.

PROF. SENTEZA KAJUBI (Kyadondo North): Point of clarification. Thank you Mr. Chairman. I am just seeking clarification. How do you control a natural disaster, an earthquake? How do you control it? Should it be possibly management?

THE CHAIRMAN: You can set up a management team. I know that in 1982, in Papua New Guinea, they set up a surveillance of a harbour where the volcano was growing up and they kept watching it until this year, it erupted. But the time it erupted, they had cleared the area, nobody died. Is that not controlling a disaster, because the disaster was not in the eruption. *(Applause)* - but in the fact that there was no disaster in among the humanity. Should we really go on to argue about this?

MR. ATWOKI AMBROSE (Youth - Northern): Mr. Chairman, I think we are labouring a lot about something which is so straight forward. The reason is that, we have provided for a Commission for disaster and saying that it does not necessitate entrusting the Central Government with the same function. I believe this is very naive. We have provided for other institutions and we have also included such institutions in the schedule. I believe for consistency's sake, we should include disaster, Mr. Chairman. Thank you.

THE CHAIRMAN: Do we agree on control of epidemics and disasters? It can be control and management if you so wish.

MISS. BYANYIMA: Thank you Chairman. I agree with control and management of epidemics and national disasters, but Mr. Chairman, you are moving a little bit too fast for me. I have been puzzled by these two items on the list, national standards and national research. I do not mean to take you back, but Mr. Chairman, I do not quite understand the intentions of these. When you say National Research, what do you mean by that? It sounds sinister, it sounds more like State Research. I ask myself, supposing I am doing a mode on energy policy in Uganda, is that national research, is that responsibility of the Government? Can I do it privately or not? And when you say national standard, is this like the standard of dress, the standard of dance? What is the national standard? If we are talking about products and quality, we should say so. I think the two terms do not say exactly what the intentions were and we ought to clarify them better. Thank you.

THE CHAIRMAN: I take it that the Honourable Member was only expressing her feelings but we have already moved and we have passed those things. I think they speak for themselves. I mean national standards, I do not think anyone, where you said, national standards in balance as known today, that it would be referring to the standard of dance, or dress. If you are talking about the training to a level of dancing, it has to be a National Dancing Curriculum.

DR. MIYINGO-KEZIMBIRA (Bukoto Mid-West): Mr. Chairman, I just wanted to give a little information to clarify that if you allow national standards, Mr. Chairman. We have today in the country an organisation called National Bureau of Standards, and national standards are the standards that we set for our own requirement, below which we think we are getting other substandard goods of sub-standard services. Now, as far as National research is concerned, I think the word 'policy' better be added to it to make it meaningful, National Research Policy. I beg to move.

THE CHAIRMAN: Okay, we have benefited from Honourable Byanyima's intervention I think we could without any harm, add National Research Policy. But national standards, we cannot really go because there is even legislation on it. You have national Technical Standards and National standards generally, like the amount of moisture in a loaf of Bread or some fish you have frozen, if you want to sell, as against National Technical Standards as to manufacturers.

I do not think we can really go beyond that. Honourable Byanyima, you are taking us back.

MISS. BYANYIMA: Mr. Chairman, with your indulgence, could we just add, 'National standards of products and services.'

THE CHAIRMAN: No. Let us continue where we are, we have done control and management of epidemics and disasters. Agreed? No. 27- Hospitals and Public Health Policy.

MR. TIGWEZIRE JOHN (Bunyangabu County): Thank you very much, Mr. Chairman. Mr. Chairman, in a similar manner as we dealt with 21, I would suggest that we just call it a Health Policy and we end at that. Health Policy is general enough to cater for everything.

THE CHAIRMAN: Honourable Kamanda Bataringaya has been agitated by that statement.

DR. KAMANDA BATARINGAYA (Bwamba County): Thank you very much Mr. Chairman. I would like to tell the Honourable who is trying to say we move, we say Health Policy. You see, when we talk of hospitals, the Local Administration or the Local authorities, will not be able to sustain, here there are two words, Public Health Policy and hospitals. Now, Public Health Policy is dealing with preventive measures, whereas the hospitals are dealing with curative measures. So, - *(interruption)*

THE CHAIRMAN: Could Honourable members not heckle the Honourable Member. I will protect you from Honourable Kamuron.

DR. KAMANDA BATARINGAYA: I agree, Mr. Chairman, I entirely agree with the recommendation of the Committee 4, that we retain as it is hospitals and Public Health Policy.

THE CHAIRMAN: Honourable Tigwezire, I think the point being made is that, Public Health is a Technical term. It is not just a general statement, it is just part of Health Policy. Can I hear from Honourable - can we all hear from you directly? Honourable Kiiza Besigye.

LT. COL. KIIZA BESIGYE (NRA Delegate): Mr. Chairman, I think living Health Policy is sufficient. It covers Public Health, it covers curative services and if you put hospitals, you may confuse the area of private hospitals with Public hospitals. Whereas all those can take part of the Health Policy that will be spelt out by the Government. I do not think that saying Health Policy will preclude the separation of Public Health from Curative services.

DR. MUSEKURA NDARUHUTSE (Bufumbira North): Mr. Chairman, I think if we eliminate the word 'public health' and we only leave 'Health Policy,' we may forget all about veterinary Public Health. So, Mr. Chairman, I feel that Public Health Policy would be better because, it would also cater for veterinary public health. Thank you Mr. Chairman.

THE CHAIRMAN: But Doctor, have you looked at 28, we are coming to 28. Does that one not cover ... Okay, let us hear Dr. Nyeko.

DR. NYEKO: I was going to give information that the Veterinary aspect is adequately covered under 28. So, the Health policy alone, should be sufficient. I support what Honourable Dr. Besigye said. Thank you.

THE CHAIRMAN: Is it Health Policy or Public Health Policy.

DR. NYEKO: Health Policy.

THE CHAIRMAN: So, the suggestion is that we replace No. 27 with Health Policy and then we leave out Public and the hospitals and then the rest falls within there.

MR. MALIRO GASTON (Mwenge County North): Mr. Chairman, when we included this word 'hospital,' we first thought not only of the infrastructure, the putting up of the buildings, which I think the Local Government can do also. But we also thought of staffing and when you talk of hospitals, it does not limit it to the staff again, but also you have the functioning of the hospital. The staffing the functions, that is the whole policy of the hospital. It is not adequate to leave it to the Local Government. We said that, what is not here, what is not on this list, is reserved for the Local Government. So, if we exclude hospital, we are saying, the hospital is the responsibility of the Local Government. I do not think the Local Government will have the capacity to do the staffing, the training, and all that is involved in hospital management. Therefore, let us have it for the Central Government, but it can be delegated to that Local Government, which is strong enough to run it. Another thing which we did not want, is localising hospitals, whereby, people will start saying that this hospital belongs to Kabarole, any person not coming from Kabarole must pay this fee. We want to have

hospitals as public utilities which should not be localised.Mr. Chairman, I think this formulation is adequate and we thought about it very well and I think it should be retained.

THE CHAIRMAN: Honourable Maliro, if you say that the Central Government has got responsibility for health policy, you are in fact, inviting Central Government to say that by virtue of a policy determined either through Parliament, in a form of a Statute, the Government will be responsible for referral hospitals. The following will be district hospitals in the hands of districts and they will be looking after Health Centres. The Government will be in charge of 1,2,3,4, distribution of drugs and so forth and so on. So that at that point, you are saying, let Parliament together with Government, determine who will be responsible for what, without us having to enumerate here and then leave some things out. But we are not saying that automatically from this, district to be in charge of hospitals. We are saying, hospitals like other aspects of health, will fall under National Health Policy, the rest is who is responsible for what.

MR. SAM KUTESA: Point of clarification. I am seeking further clarification precisely on what you have explained Mr. Chairman. I thought that the purpose of drawing up this Schedule is to make a distinction between those functions that are reserved for the Central Government and those which are reserved for Local Government. I can understand when you talk about the Health Policy, there, for example, you can say, cost sharing, that is a Health Policy. That could national, whether it is in a dispensary or a hospital. But if you are going to make a distinction to who runs - *(Interruption)*

THE CHAIRMAN: I would rather you finished your presentation, then he will have a Floor on his own.

MR. SAM KUTESA: Yes, I thought that here, we are talking about functions, roles. So, the Government can make policy and Government will always continue to make a policy. For example, when we talk about Education Policy, you can talk about free education. That may be a policy evolved by the Central government, whether it is in Primary Schools or Secondary schools. But I thought we were trying to find out who runs what, and we should draw a distinction. When you talk about hospitals, I think what you have in mind, is that the Local Government should be responsible for dispensaries,even if the policy is cost sharing. So, I am getting confused, the purpose of this Schedule, if the purpose of this Schedule is draw a distinction between what Central Government shall take over or handle as opposed to what the Local Government is going to handle, we all know that Central Government makes policies. We must draw a distinction as to who runs what and I thought this was purpose of this Schedule.

THE CHAIRMAN: Are we talking about running hospitals or are we talking about policy for development and management of hospitals, because - *(Interruption)*

MR. SAM KUTESA: The whole debate Mr. Chairman, has been what is reserved for Local Government. We are even talking about concurrent list. So the intention is to separate who runs what.

THE CHAIRMAN: We have followed that, but Honourable Kutesa, by your very logic, you are saying that if we pass this as it is, and leave out policy, then the national Government will be responsible for all hospitals. Then the rest will be in the hands of Local Government, but that, even policy relating to Health centres will be in hands of Local Governments. You are saying, under Health Policy, you can in fact determine the various components as who is responsible for what, without it having to be in the Constitution.

MR. TIGWEZIRE: Thank you Mr. Chairman. I fail to understand why Honourable Kutesa is confused about what we are saying. We are simply saying, there should be a general national policy on health and under subsidiary legislation, Parliament can say such hospitals will be run by the district. Such hospitals will be referral hospitals or National hospitals like Mulago. So, we are only saying, the function of overseeing the national health policy should be left to the State for example, to Government. So, Government is only over-seeing a general health policy. I thank you Mr. Chairman.

MR. BIDANDI SSALI: Just a little addition to that, is the fact that the recognition by the Committee, that some hospitals will be run privately. If you constitutionalise that hospitals will be run by Central Government, then you are not being very serious. We were told in the Committee and we realised, that is why we said that the policy set up by

the Central Government will state that the existing hospitals will continue to be run by the Central Government. Any Local Government which can run a hospital is free, any private person is free, any institution is free, but to set up such hospitals, the following must be followed.

THE CHAIRMAN: It must comply with the following components of national policy.

MR. BIDANDI SSALI: Yes, they must comply to this, but I am sure Honourable Sam Kutesa realises that the setting up of hospitals is not necessarily reserved either to Central Government or Local Government. So, what matters now, is, the general policy covering the Health. It is that policy that will state matters covering hospitals. Just like we said, Education Policy, everybody realises that perhaps it will take some time before a district can run a full fledged University. We are not excluding it. That is why we said, Education Policy.

THE CHAIRMAN: In fact, as it was before, it was restricting District Governments from running Universities. It was saying only old Post-Secondary education institutions were to be the responsibility of the Central Government before we amended it. But now what it is, in fact, what we are saying, if you do pass it, is that, by that policy, you can set out components. It could be only in relation to those which have to be run by the Central Government. Otherwise, anybody else who complies with National Policy can set up a hospital, can set up a Health centre, can set up a dispensary. You must comply and it must be within the National policy. That is how I was looking at it. So, No. 27, we say Health Policy. No, 28.

DR. MIYINGO KEZIMBIRA: Point of clarification. Mr. Chairman, we have finished that. I am not objecting but I just want to be clarified with whether under Health Policy we are going to include the National Drug and Chemical Policy. Before we run away, we better clear that, because I think it is an important component to be included.

THE CHAIRMAN: National standards, is it not?

DR. MIYINGO KEZIMBIRA: No, it is not health.

THE CHAIRMAN: You mean manufacturing or what?

DR. MIYINGO KEZIMBIRA: Even that.

THE CHAIRMAN: But that is industrial policy. When you set up a factory to manufacture pharmaceutical and therapeutic substances, you are definitely going into an industrial area. Therefore, subject of course, also to requirements as to health policy, you can interplay both.

DR. MIYINGO KEZIMBIRA: Mr. Chairman, this is a very wide area and I think it cannot just be encompassed under this and is very vital for the nation.

THE CHAIRMAN: Which particular area? Which particular components of that area you are saying?

DR. MIYINGO KEZIMBIRA: National Drugs and Chemical Policy, Mr. Chairman, touches on a lot of implications. The types of drugs that we get into the country. Finding out whether the drugs that we have contain the ingredients that we want and whatever implications their use has got on the people and also on the animals.

THE CHAIRMAN: There are two answers there. You can have under National Standards, it can be a component of National Research Policy. It can also be under 29, if it relates to health, and if it relates to animals and can be under environment. So, if we are to mention all of them, we would be in fact, committing a grave mistake. Because we may be leaving out certain areas which are covered in 29. No. 28.

MRS. MUKIIBI BENIGNA (Women-Kibaale): Thank you Mr. Chairman. In the same vein, Mr. Chairman, I would like to amend 28 to read, Agricultural Policy.

DR. MIYINGO KEZIMBIRA: Thank you very Much , Mr. Chairman. Mr. Chairman, I cannot settle for just Agricultural Policy. I think we have got to make a distinction here. In fact, Mr. Chairman, my Amendment was even going to become a little more specific. I had wanted to call it Agricultural Livestock and Animal Industry Policy. Mr. Chairman, why I call it this, Animal Industry by itself may just maintain the Industry connected with Livestock. But we have under Livestock, under animals, policies of breeding and so on, which will not be encompassed by animal Industry. So, I wanted Agriculture, Livestock and Animal Industry Policy.

It is technical, Mr. Chairman, as you said to the public, so I beg the indulgence of the House that we do not miss a very important thing, because right now, Mr. Chairman, we have had no breeding - *(Interruption)*

THE CHAIRMAN: Order, order.

DR. MIYINGO KEZIMBIRA: We have not had a Breeding Policy in this country and we are in the process of formulating a Breeding Policy for this nation. We need to include this as a responsibility of Central Government, to set this out, especially in view of decentralisation. Mr. Chairman, I beg to move.

DR. NYEKO: Thank you Mr. Chairman. I would like to disagree with Honourable Kezimbira's Motion. If we say Agricultural Policy, to me, that is sufficient. You know, Agriculture actually covers crop and animal productions, including Fisheries. The moment we start going into Animal Industry, Livestock, and Animal Industry, we are repeating ourselves and it is not required. We shall have left Fisheries.Some people, later on may start Frog Farming.

THE CHAIRMAN: Order, order.

DR. NYEKO: We may start the Bee keeping, all these are Agricultural activities, Crocodile Farming. So, Mr. Chairman, I would settle for nothing less than Agricultural Policy. If anything, I would like to mention here, that even the Ministry of Agriculture, Animal Industry, etcetera, should be changed into the Ministry of Agriculture. We waste a lot of ink for nothing. Thank you, Mr. Chairman.

THE CHAIRMAN: It should be Ministry of Primary Industry then. Honourable Musana, Order, let us complete this Schedule before we go for lunch. Order.

DR. MUSAANA SOPHY (Buikwe County North): Thank you very much, Mr. Chairman. As a scientist in that field, the word Agricultural, covers everything, crop, animal, forestry, fisheries, apiary, everything. So, if we have got to go for a broad policy, we say Agricultural Policy, if we go into Animal Livestock, then we will have to mention all the crop, animals, insects, forestry, fisheries. Everything will have to come in. *(Applause)* So, Mr. Chairman, I would go with the view of Dr. Nyeko, that we just say Agricultural Policy.

THE CHAIRMAN: That was started by Honourable Mukiibi actually, but she does not have speak to it, you can see they have spoken for you.

DR. MUSEKURA NDARUHUTSE: Mr. Chairman, I think we should not over look the issue which was raised by Honourable Dr. Miyingo Kezimbira, regarding livestock, because it is also very crucial. I would prefer that we specify crops and then we also talk about the animal industry. Because insects, Mr. Chairman, are animals and fish Mr. Chairman, are animals. So, once we talk about crop and Animal industry Policy, then we cover all of them and we do not leave out the veterinary aspect. Thank you Mr. Chairman.

THE CHAIRMAN: We now discussing the Motion moved by Honourable Mukiibi, that we only have Agricultural Policy.

MR. RWABITA DEO (Ibanda South): Thank you very much, Mr. Chairman. Mr. Chairman, I want to support a Motion moved by Dr. Miyingo Kezimbira. Then I am opposing Mukiibi's Motion. Mr. Chairman, for your information Mr. Chairman, Honourable Members even today, as we stand, we have a problem in the Ministry of Agriculture and Animal Industry. The Policy has failed to identify the difference between Agriculture per se and livestock on the other hand, there is a lot of conflict. I am a farmer and I am talking from experience. The term livestock is much wider than Animal Industry, Mr. Chairman, it covers hens, ducks, bees, animals like, sheep, goats, name it. When you talk of an animal then you leave out the hens and that classification of creatures. But the terminology livestock, Mr. Chairman, covers not only animals, but it covers also birds, insects, what have you, just as described or defined by the policy in the Animal and Agricultural Policy. So, I think Dr. Kezimbira was right to say that we specify that we have Agricultural and Livestock Animal Industry Policy, Mr. Chairman.

THE CHAIRMAN: Are there any assessors in this field? Let us hear an assessor from Kamuli.

MISS KALIKWANI IRENE (Women - Kamuli): Thank you, Mr. Chairman. Now, from an assessors view, I would go with Honourable

Mukiibi's Amendment, because I am satisfied that Agriculture would cover both crop and animals. Now, if we just say crop and animal, and assume that animals include all the other animals, for that matter, people are also animals. Now, would they also be catered there? But when we talk of Agriculture, it is more distinct for instance, from 27, where we are talking about the health of people and not the health of animals. So, here, in 28, we are talking about Agriculture which covers crops and animals. That is my assessor's opinion, Chairman.

THE CHAIRMAN: Okay, let us decide on this one. We had expert evidence from the veterinary people and they were divided on the question. Some favoured agriculture with a lot of eloquence, and others said, it was not adequate.In otherwords, it does not seem to do any harm either of them. So, let us decide. Honourable Mukiibi is suggesting that we delete the words 'and Animal Industry Policy,' and just state 'Agricultural Policy.' I will put the question.

(Question put and agreed to)

THE CHAIRMAN: Now, 29 is a cultural Clause.

DR. KINYATA: Mr. Chairman, before you go to 29,..

THE CHAIRMAN: No, we have finished with the other one.

DR. KINYATA: Yes we have finished with the other one, because 29,Mr. Chairman, is the last item, but I wanted to introduce a new item, which I had wanted to introduce before. It was not well placed, and that is the Population Policy. Mr. Chairman, census we said was counting people, animals and so on, and Honourable Malinga explained that the number 17, Item No. 17 was for everything that you want to count, animals, and population together.

THE CHAIRMAN: But Dr. Kinyata, why do you count them?

DR. KINYATA: Pardon?

THE CHAIRMAN: Do you count them for their own sake or you count them for a reason?

DR. KINYATA: Yea, but I am talking of the Policy. For example, are you saying Mr. Chairman, here you could include Birth Control, the growth of the population and so on, in No. 17?

THE CHAIRMAN: There is Health Policy which could go towards...

DR. KINYATA: Therefore, it is like Health Policy, this is why I am talking of Population Policy. Mr. Chairman, already there is National Population Secretariat in this country.

THE CHAIRMAN: Honourable Kinyata, you have not received any secondment. So, we cannot give you the Floor.

DR. KINYATA: People are seconding me, Mr. Chairman.

THE CHAIRMAN: 29,

MRS. RWABYOMERE: Thank you Mr. Chairman. I have something small to add on 29 which you could possibly pass on to our Technical Committee to read as follows, after any matter incidental.To add 'or connected with.' So, the whole sentence reads: *"Any matter incidental to or connected with the functions and services mentioned in this Schedule."* Thank you Mr. Chairman.

THE CHAIRMAN: Agreed? Okay, 29 is agreed to. That ends the Schedule except for those matters which were stood over, namely; 7, 8, and 24, those will come when the committee on land reports and we see how we proceed from there. Honourable Onegi Obel, you do not want to proceed to lunch?

MR. ONEGI OBEL (Jonam County): Thank you Chairman. Mr. Chairman, I had a problem and raised my hand but you did not notice me. The problem is over item 13. Mr. Chairman, I am not satisfied with the reference of provisions to all services, the word 'all services.' I would have wanted the word 'all' to be omitted because you cannot talk of Mr. Chairman, then the Government will take over everything for this district, probably including matters that include every body. Mr. Chairman, I think that is wrong. That is all I wanted to comment on.

THE CHAIRMAN: Honourable Onegi Obel is suggesting that in 13, we delete the words 'all services.' I do not see any supporter of this. Is that supported? By Honourable Obua Otoa. Order, delegates,order, it is proposed that we delete the word 'all' appearing in 13. It does no harm really.

MR. MULENGA: Thank you Mr. Chairman. Mr. Chairman, mine is a very little query.

THE CHAIRMAN: No, I was addressing the proposal of Honourable Onegi Obel.

MR. MULENGA: I thought when you said that it does no harm, it has concluded that -

THE CHAIRMAN: He says making national plans for the provision of services, instead of all services.

MR. MULENGA: I do not see any harm.

THE CHAIRMAN: I do not see any harm in it myself. Agreed that the word 'all' be removed. Okay, Honourable Mulenga.

MR. MULENGA: Mr. Chairman, mine is very simple but I do not know whether it is a typing error. No.18. Public Services of Uganda, do you mean Public Services or the Public Service? We may have Public Service in districts.

THE CHAIRMAN: Do we not have Public services in the sense that you have the Civil Service, you have the Police, you have the Prisons?

MR. MULENGA: Now, I understand. I hope it will be understood that way all the time.

THE CHAIRMAN: We shall see the definition of Public Service when we come to that. Honourable Delegates, with that, I wish to adjourn for Lunch, we resume at 3.00 p.m. Honourable Miyingo, I have just adjourned, I think you can raise your matter when we resume, we shall resume at 3.00 p.m.

(The Assembly adjourned for Lunch and resumed at 3.00 p.m)

THE CHAIRMAN: Order Honourable Delegates. When we adjourned for lunch, we had just completed consideration of the proposed Schedule 4 and Article 214. Now, we come to a new section relating to finances of local government. I now give the Floor to Honourable Katenta Apuuli, the chairman of the committee.

MR. KATENTA APUULI: I thank you Mr. Chairman. Article 215, Clause 1. The Committee recommends that a new Article 215 be introduced to stand part of this constitution to read: *"Local Government shall have power to levy, collect and appropriate taxes and the taxes to be collected by local government shall include but not be limited to rents, rates, royalties, births, marriages, deaths and stamp duties, levies, fees, licenses and personal tax.* Honourable Delegates, personal tax here is supposed to represent graduated tax. We thought that maybe we shall one day get away from the name of graduated tax. That is why we introduced it here as personal tax. Mr. Chairman, I beg to move.

THE CHAIRMAN: Honourable Kaberuka.

DR. KABERUKA WILLIAM (Ndorwa West): Chairman, Select Committee III. Mr. Chairman, I want to remind this Assembly that when we were dealing with Article 178 of Chapter on Finance, we stood it over to be discussed together with this article. Therefore, I want to take you back to 178 and see whether we should carry it together with this.Because we find that what is provided here, some clauses, especially the Clause 4 of this article was already catered for in our 178 in a general term. I think that Clause should be the subject of the general finance chapter which is all embracing. I do not know how we can proceed Mr. Chairman. I beg your indulgence to guide us as to how we can move in this text.

THE CHAIRMAN: What did we pass under 170? You stood over the whole of it.

DR. KABERUKA: When I was reading our deliberations on that date, it seems we stood over the whole article.

THE CHAIRMAN: Could you tell us what your recommendation was.

DR. KABERUKA: My committee recommended that Clause I of Article 178 which reads: *"No tax shall be imposed except under authority of an act of Parliament."* Then we said that Clause 2 should read: *"Where a law enacted under Clause 1 of this article confers power on any person or authority, to waive or vary a tax imposed by that law, such person or authority shall report to parliament periodically as shall be determined by law."* Then we had Clause 3 which reads: *"Parliament shall make laws to establish tax tribunals for the purposes of settling disputes concerning tax matters."* Those were the three clauses under Article 178 and I think we should, as we did say that time that we should discuss this together with this article that we are embarking on. I thank you.

THE CHAIRMAN: Can I get some guidance from the members on Floor. It would appear that the members at the time when they sought to stand over this matter. They wanted to see how it would affect the proposed powers to be given to local level governments in the field of taxation.So that we do not pass a blanket provision which may prejudice the powers that are to be given or how they coincide or work together or tie in with those that are to be set out in respect of local governments. So, now it would appear that we proceed this way. We see what powers we give local government and then we see what we do to 178 in view of that. Is that the correct approach. Honourable Rwomushana.

MR. RWOMUSHANA CHARLES (Rujumbura County): Thank you Mr. Chairman. The fear then was that if we give enormous powers to local authorities to tax, there may be over taxation or there should be a need to have uniformity in taxation. So that the rates do not vary too much. Mr. Chairman, to me I would go a long way to support the view that we should limit powers of the local government because they have got enormous demands. Therefore, the peasant, the common man will be the beast of burden. Besides, all taxes are born by him. The Customs tax we talk about, all those are born by the consumer. the consumer is the common man. I read in the press that coffee exporters are even planning to pass over the tax to the farmers. So, Mr. Chairman, I am of the view that we pass that no tax should be imposed by a local authority except under the act of parliament.

THE CHAIRMAN: Of course, one way it can be done is this. If you think that 178 (1) should operate in form in which it is then you would have to say. *"Subject to 178 (1) Local governments shall have the power,"* which means then parliament could be brought in to pass a statute under which they would be authorised to collect taxes. It is in fact, provided in Clause 2 which says if we approve it, provided of course, we have polished 178. Which means actually we should start with 178 and then because of 215, we see how it ties into 178. Can I suggest Honourable Delegates, that we put aside 215, we go to 178 and then we come back to 215 and then tie it into whatever we shall have of 178. That is if you wish that there should be some control on the Freedom of the district just to tax. Okay, let us now do 178(1). Shall I ask Honourable Kaberuka to lead us into 178 first.

DR. KABERUKA: Thank you Mr. Chairman. My committee recommends that Clause 1 of Article 178 remains as it appears in the Draft Constitution to read: *"No tax shall be imposed except under the authority of an act of parliament."* I beg to move.

THE CHAIRMAN: That is approved.

DR. KABERUKA: (2) My committee recommends that Clause 2 of Article of 178 be amended by deleting the words 'the exercise of that power in favour of any' so that the new Clause reads: *"Where law enacted under Clause I of this article confers power on any person or authority to waive or vary tax imposed by that law, such a person or authority shall report to parliament periodically as shall be determined by law."* I beg to move.

THE CHAIRMAN: I can see Honourable Kalaki is uneasy. Yes, Honourable Elyau.

MR. ELYAU MIKE (Kalaki County): Thank you Mr. Chairman. I find a problem with the last sentence where it says that report to parliament from time to time. You see, the relation between parliament and this council should be properly seen so that there should not be some interference. Now, who will be reporting to parliament. Is it the minister or local authority because now we are trying to transfer powers down to the district and then also the districts will have their own parliament called District Council. Now, how will this council report to parliament when there is a Minister For Local Government? I wanted a clarification on that one.

THE CHAIRMAN: I thought what the recommendation was aiming at was that before you would exercise a power to waive a tax, you had to go to parliament first. Which was a bit ridiculous. If someone wants to import second hand clothes for purposes of orphans and you want to waive the customs duty you have to wait for parliament first. But I think the formulation they were saying was okay. A statute may give either a local council or even the Minister For Finance of Uganda the power to waive or vary some tax but there must be a report to parliament so that parliamentary control is exercised all along. In other words, parliament knows that in the month of so and so, we waived so much and for the following reasons. That is how I understood it. Honourable Bidandi Ssali.

MR. BIDANDI SSALI: Mr. Chairman, I seek clarification. Is this clause meant for waiving of taxes that are supposed to be levied by the central government?

THE CHAIRMAN: No, it is a general provision. It is saying, as I think you can even see the headline there: *"No tax shall be imposed except under the authority of an act of parliament."* It applies across the board. Then 2) is saying okay, Parliament will pass a law, for instance the Customs and Excise Management Act or Statute. It may set out circumstances and power conferred on the Ministers managing that statute to waive or vary a tax, be it a statute conferring power on local government. Because it says: *"Where a law enacted under this ..... confers power on any person or authority..."* Then having exercised that power, there should be a report to parliament at some point. Honourable Malinga.

MR. MALINGA: Mr. Chairman, I have a problem with that. If in (1) we have said that no tax should be imposed except by authority of parliament, then I do not see why somebody should increase tax without the prior authority of parliament. Because to vary to me means, you can either slide it upwards or downwards. So, I object to an individual in the Ministry of Finance raising taxes upwards without the sanction of parliament. I take an exception to that. It is a principle which has been fought over centuries, that there shall be no taxation without the representatives of the people sanctioning it.

THE CHAIRMAN: Honourable Malinga I think you have not read the whole sentence that is why you are making a long speech. Had you read it, you would not have made that speech. It says: *"..waive or vary a tax imposed by that law, the exercise of that power in favour of any person or authority.."* In other words, I do not think they would be varying tax in your favour if they increase it.

MR. MALINGA: I thought the amendment now strikes off the words, 'the exercise of that power in favour of any person.'

THE CHAIRMAN: Does it?

HONOURABLE DELEGATES: Yes, it does.

MR. MALINGA: Yes, that one has been struck out. What we are debating now is: *"Where a law enacted under Clause I of this article confers power on any person or authority to waive or vary a tax imposed by that law, that person or authority shall report to parliament from time to time."* In other words, you will go ahead and exercise that power but only report to parliament after the event. So, what I am saying, I object to his increasing the tax. I have no objection, nobody would object to having a relief on tax burden. So, if they can do it administratively, well and good but increase, I object.

THE CHAIRMAN: Okay, can we get Dr. Kaberuka to read it again so we see -

DR. KABERUKA: Thank you Mr. Chairman. I think I should clarify that when you read Clause 2 as it is in the Draft Constitution, it requires that if any authority or person wants to vary a tax, he has to get the approval of parliament prior to taking action. We thought that would be cumbersome and make the whole exercise unworkable in some cases. So, we deleted the words 'from the exercise of that power in favour of any person or authority shall be subject to prior approval of parliament by resolution.' We substituted the words - *(Interruption)*

THE CHAIRMAN: I think that is where the problem is. I thought you had left these other words in. Have you removed 'shall be subject to prior approval of parliament only' and read: *"Where a law enacted under Clause I of this article confers power on any person or authority to waive or vary a tax imposed by that law, the exercise of that power in that favour of any person or authority shall.."*

Then you proceed about reporting to parliament. That way, I think you will not be offending Honourable Malinga's view of taxation. Could you reformulate it from what you have on your text?

DR. KABERUKA: Let me maybe read what I have here, then we find out how it could fit into what Honourable Malinga wants. The new clause reads: *"Where a law enacted under Clause I of this article confers powers on any person or authority to waive or vary the tax imposed by that law, such a person or authority shall report to parliament periodically as shall be determined by law."*

THE CHAIRMAN: Honourable Malinga, do you find a way of amending that so that it reads the way you would like to see it read. I think what has been left is that, 'when exercised in favour of any person or authority.' So that once you do that, then the variation aspect also is read to mean vary in favour rather than vary to increase. Yes, Honourable Kassaja Byakika.

MR. KASSAJJA BYAKIKA (Bunyole County): Thank you Mr. Chairman. If I understood Honourable Malinga properly. I think his problem is on 'vary a tax' which can be varied downwards and his problem is that this power can be used to increase a tax. I suggest that to remove his worries, we amend, 'vary a tax' to 'remit.' So that the sentence reads, 'to waive or remit a tax.' Then whoever has the power can decide to remit a tax proportionately downwards. They could say so and so is allowed to pay only 30 per cent instead of 50 per cent of a certain tax. I think that is what they meant Mr. Chairman.

THE CHAIRMAN: Okay, I am glad I can see hands of taxing people. Honourable Kaggwa. They were not very popular in the days of Jesus but I things have changed. *(Laughter)*

MR. KAGGWA MEDI (Kawempe South): Thank you very much Mr. Chairman. I think what Honourable Byakika proposes to impose would not arise because that would substantially change the meaning. When we talk of varying taxes here, I can appreciate with Honourable Malinga's concern, that he is worried moving upwards. But there are also situations when the taxes are lowered. I will give an example. For instance, the recent case of the personalised number plates. They were at five million but now the minister threw a Statutory instrument, has adjusted that figure to 3,000,000. How would he treat that situation? I think we still need to retain this provision because at any rate even if it is done, it will have to be done by law. A statutory instrument will have to be made to that effect.

THE CHAIRMAN: Does waive include remit?

MR. KAGGWA: No, I do not think so.

THE CHAIRMAN: Honourable Musumba can you tell us and then -

MR. MUSUMBA: Thank you very much Mr. Chairman. Waive in effect means remit because you have declared by law, by statutory instrument that the tax that was otherwise imposed and payable by so and so is hereby waived, is hereby remitted. So, waive and remit are the same in this particular context. However, Mr. Chairman, I want to take this advantage to say that I beg members to retain the varying aspect of tax because the reason why the varying tax was put here is for any Minister For Finance. Anyone responsible for matters of raising revenue and tax policy will appreciate that when you prepare a budget, you make your budget, you make your budget speech. You lay out areas where you intend to raise taxes. To begin with, there is a law today. The Provisional Collection Order Of Taxes Act. Under which the day the budget is read, all those provisions which have been read automatically become operative. Any parliamentarian here knows about it and it is only after in this case usually months that actually the parliament sits and passes these rates into actual taxes. Now, Mr. Chairman, in between there are occasions where it is realised that maybe the formulation and the basis upon which a particular rate of tax was proposed to parliament is not the most appropriate. Or even after parliament has passed the Finance Bill, after its Second Reading, to become a Finance Statute, there are situations in the economy that come up which were not either way not foreseen before the budget. Or they were overlooked. Immediate measures must be put into place in order to rectify a situation. Take for instance, it is possible to propose to parliament that as Minister for Finance, you intend to levy 10 per cent say, import duty on gunny bags. Then all of a sudden within the market, within your domestic economy, there is production of gunny bags which you had not anticipated. You did not know the machine would start producing gunny

bags and at a rate of 10 per cent. There is a flood of gunny bags from abroad and you need to take immediate measures to increase the rate of tax in order to protect your local manufactured item. Mr. Chairman, this is a power which normally the Minister retains. He can go back to parliament to justify the increase and why. If parliament does not ratify, then that is a situation which parliament decides and it can be lifted. So, Mr. Chairman, this latitude is important. The varying of taxes can be either way and it has justification for either way.

THE CHAIRMAN: But Honourable Musumba, my understanding of (2) was to guard against possible abuse of a power given to a person to favour groups of people or individuals. I do not think (2) causes worry about the right of government to increase taxes. In any case if they so wish, they come in parliament and say we want to raise our tax rate from 10 to 15 per cent for the following reasons.But I think what they are worried about is what has been reported in some countries where ministers have embarked upon themselves for no justifiable reasons to remit taxes in favour of their friends and so on. So, this is saying should you exercise that power, then please tell parliament so that they know about it. In which case, the concern is more with the power to reduce in favour of a person or a group of persons or authority rather than the power to raise because that one is always there. That is how I understood it. Honourable Malinga you have come up with some formulation?

MR. MALINGA: Mr. Chairman, I think what Honourable Musumba is saying about varying taxes is generally across the board. That is dealt with under Clause 1. What we are talking about in Clause 2 is in favour of a particular individual that the tax imposed on vehicles is hereby remitted in case of a vehicle imported by Honourable Musumba. That is the question we are dealing with. The remission or waiving of a tax payable by an individual person or a class of people but not across the board. If it is a tax across the board, the variation will be done under Clause 1, because that is now a new tax. That is dealt with under I to vary or to waive in favour of an individual. That is what is addressed in 2 because we have several cases where taxes are waived in case of (1) say mission hospitals. Sometimes in case of military officers, the importation of their vehicles, taxes are waived and that these are the kind of things which can easily be abused. If it is across the board, I can understand but that is dealt with under (1). It is only if Committee III had really appraised what the mischief that the Odoki Commission was trying to address in (2). It is favouring an individual or a class of individuals other than generally across the board. So, this is why I am saying that the formulation of Odoki Commission was much better because we are attacking the abuse so to say, of the power to vary or to waive or to remit tax.

THE CHAIRMAN: But don't you think that it would be ridiculous to call parliament to Session because of this provision. Simply because there are some refugees who have walked in from Sudan and someone is bringing in second hand clothes at Entebbe? So, I think it has to be reformulated at least in respect of the way they were writing that he must get prior approval of parliament.

MR. MALINGA: Then in that case, Mr. Chairman, the formulation is put forward that we should have instead dropped 'prior.' It will need to be sanctioned whether before or after by parliament. That, I think to me, would be more acceptable.

THE CHAIRMAN: Honourable Kaggwa, what do you say.

MR. KAGGWA: Thank you Mr. Chairman. I think it will make the workings of the Minister For Finance and indeed any other persons who have powers to give these exemptions to function. I think if we are to address the concern of Honourable Malinga, let the person concerned given the exemption as it were, report to parliament. Then when it comes to its next budget, it can say well, you gave out so many exemptions, we are limiting you too so much. I know right now for instance, the exemptions to Makerere have been cancelled. Those to doctors have been cancelled and this has been through the recommendation of the committees in Parliament. But to call Parliament to say, I am going to give remittance to an investor, you please accept. I think it will be so cumbersome and impractical, Mr. Chairman.

THE CHAIRMAN: Honourable Byakika, then Honourable Kuteesa.

MR. BYAKIKA: Thank you Mr. Chairman. Under this law, a minister has power to remit and that power has already been given to him by parliament. Therefore, it is not necessary after the power has

been given to him by parliament for the person giving the power again to go back and say I want now to remit so much tax from such a body.Because that power is already given but the idea here in Committee III was to make sure that whoever is given such power does not put it into misuse. So that the parliament which has given the minister power to remit comes to know how much of that power has been used and whether the minister so empowered has been using it in the interest of the nation.

THE CHAIRMAN: So, now, for me I am looking for the formulation really. I think we are agreed on the policy. Honourable Ndege.

MR. NDEGE JOHN (Luuka County): Thank you Mr. Chairman. I think we can look at this formulation: *"Where a law enacted under Clause I of this article confers power on any person or authority to waive or vary tax imposed by the law, the exercise of that power in favour of any person or authority shall report to parliament periodically from time to time on the basis as required by the law."*

THE CHAIRMAN: Well you can actually be specific and say: *"The exercise of that power shall be reported to the parliament every three months."* Then every three months the Minister For Finance says last three months, in the last quarter I waived so much.

MR. NDEGE: Shall to parliament every three months.

THE CHAIRMAN: Well, we are still polishing it up with the lawyers on the Floor. Honourable Magezi.

DR. MAGEZI DAUDI (Jinja Municipality East): Thank you very much Mr. Chairman. If we do not have to get parliamentary prior approval, to me I do not see the reason why we should have Clause 2 at all, because parliament will just be a rubber stamp. They will not be able to reverse the action taken and they will not be able to stop the variation of the tax because there is another law already which had empowered the Minister or the Director General for this exemption. So, short of leaving Clause 2 as it is, I do not see the purpose, I do not see usefulness of merely taking or wasting time of the Parliament to say that these are the taxes we have. So, I really oppose the proposed amendment. I suggest that we stick to what is in the Odoki Draft Commission.

THE CHAIRMAN: Honourable Kassajja Patrick.

MR. KASAJJA: Thank you very much Mr. Chairman. In the world over, the practice is that any authority given power to deal with taxation, should try to minimise as much as possible any leakages which are bound to reduce the revenue collection. One of these leakages Mr. Chairman, has been identified to be some of the powers given to those authorities to waive taxes. I am sure when this article was being reformulated by the Odoki Committee they did it carefully well knowing what has been happening in this country. Even as we are talking now, the government is still losing quite some substantial amount of money in waiving in form of favours. So, I think as Honourable Magezi has said, if we do not pay much attention to this idea of prior approval to the parliament, then I would not also see the need of having this clause. Secondly, Mr. Chairman, there is also a confusion I think which Members are trying to identify in this Clause. One, is to do with the varying of the tax. The other one which I think is confusing us most is that one which deals with the waiving. The varying of tax, I think there is no Member here who does not wish to see a Minister For Finance or any authority dealing with taxation coming to Parliament and getting support of his policy, whether he should vary that tax or not. I think that one is agreeable.But this one here where the leakage is most likely to be so much, I think that is where this article is trying to address mostly. Therefore, I would like to suggest to the Members that the prior approval should be taken care of in this clause. Otherwise we shall be doing nothing which is different from what is happening.

THE CHAIRMAN: Honourable Kassajja, I think you have exhibited together with the Honourable Magezi, lack of confidence in the parliament. I thought that parliament controls government through various ways. One, is by directly passing laws which should be applied or another by bringing public pressure to bear on certain situations so that things are changed. Now, under the present arrangement, I do not think there is a requirement for parliamentary supervision. What they were suggesting in their amendment was that even if you have it, you must have it because you cannot foresee a situation that you must not give a tax exemption

at all. But if you do exercise that because of certain exigencies, they you must tell parliament so that parliament can decide, because they are free to bring any Motion on it. Even a Motion of censure against the Minister or even condemnation so that the exercise of it by the Minister or the authority will be done carefully. They know that some day it can be laid before parliament. But this is how I understood the reason behind this. Honourable Sam Kuteesa.

MR. KUTEESA SAM: Mr. Chairman, I agree with your interpretation because if parliament is to check every exemption, then that same parliament should never have made a law empowering the Minister for Finance to exercise that power. *(Applause)* So, the important thing is that by the time an enactment is made by parliament saying that we are conferring power on you to use your discretion and then you come and report to us once in a while what you have done. I think that is a more satisfactory situation than a Minister for Finance carrying 110 applications for exemption to go to parliament. You say for exemption (1), a resolution has been obtained, for exemption (2), parliament does not agree. It goes on in fact, in three to talk about a requirement of two thirds of parliament to debate an exemption of a motor vehicle 1. Suppose you have thousand of them. Then why do you in the first place confer this power on the Minister? What you want to do is to ensure that the Minister is exercising his discretion properly. So, I think that is why the Committee's report of requiring a report is a good thing. It is a check on the Minister For Finance or that authority but we should tie his hands and yet say we have vested power in him.

THE CHAIRMAN: Honourable Tibamanya.

MR. TIBAMANYA URBAN (Kashari County): Thank you Mr. Chairman. Mr. Chairman, if parliament has in its great wisdom empowered someone to vary a tax, then its intentions surely must have been that person can vary it upwards too. As Honourable Kuteesa says, the check can only be to report to parliament periodically. So, Honourable Malinga should have no problem over this. It would have been the intention of parliament to empower somebody to vary upwards or downwards whatever it is and the check is parliament. I thank you.

THE CHAIRMAN: I think let me hear Honourable Atwoki and Honourable Tigwezire, then I will come back to the mover. He may have to approve the principle and then the draftsmen can do the rest.

MR. ATWOKI: Thank you Mr. Chairman. Mr. Chairman, I am a member of Committee III. Mr. Chairman, we went into great lengths to discuss even the merits and demerits of tax exemptions. We came to the conclusion that there is no way the economy can even do without tax exemptions. So, we agreed that in principle there must be room for tax exemption. Then, we went ahead to consider that is it possible that the Minister should have powers to exempt? Or he first seeks the approval of parliament. We also discovered that this one would be too cumbersome and we decided to give the minister powers to give tax exemptions. The check which we put in place was for the periodic reporting of that minister to parliament maybe quarterly to inform Members of Parliament what kind of tax exemptions he has given. Mr. Chairman, it is also important to note that it would be ridiculous for the minister to go and seek the resolution of parliament for tax exemption for an individual who wants to buy a car. So, we saw that it was better we give the minister the discretion and then report to parliament. Another example is the Coffee Exporters Association. Recently it was being discussed whether the taxes should be reduced or not. I do not think it would have been proper if it was decided that let parliament first be summoned and then the coffee exporters are listened to. It would be ridiculous. So, it is also true that there is a law which already empowers the minister and even the Commissioner General of Uganda Revenue Authority to waive taxes. This one is for ease of administration. I think the report which we have presented to the Assembly is quite relevant to the circumstances under which tax exemption can operate. Thank you very much.

THE CHAIRMAN: Honourable Tigwezire.

MR. TIGWEZIRE: Thank you very much Mr. Chairman. I think all of us seem to agree on the principle that the minister should be given powers to exempt taxes. Where we do not seem to agree is on this periodic reporting to parliament. Perhaps now we can come out with a formulation which states the period after which the Minister should report to parliament. We did this in our committee knowing that some ministers on certain occasions

have misused their powers to exempt taxes in favour of individuals or organisations which they have some interest in. When we talked of periodic, we were not specific and I have heard you Mr. Chairman, saying that maybe we can say every four months, which can be acceptable. We did it with the intention of checking the powers of the minister. So that should the minister misuse those powers after four months parliament will get to know and then that minister will not continue misusing that power or parliament can take action against such a minister. So, Mr. Chairman, we can agree here and say we change the periodic and make it quarterly. I thank you Mr. Chairman.

THE CHAIRMAN: Yes, now let us get the thing first clear in our minds. The wording as it is in (2) it is saying 'Parliament must tax,' it is as simple as that in (1). It is parliament to tax. But should parliament when taxing say, the Uganda Revenue Authority has power to waive or to vary a tax, that is fine. But should the person empowered to do so exercise it in favour of anybody, then he must report to parliament. They are not saying that if you push it upwards you must. The way it is written. It would appear it is normal thing, you remember they would wake up one morning and say the tax on fuel now has gone up. That is a variation because it is sometimes necessary. They are saying should it be exercised in favour of anybody, then that exercise of that power must be reported to parliament. The rest is simply a question of how often should the minister report? Honourable Bidandi Ssali.

MR. BIDANDI SSALI: In my view, Mr. Chairman, the very parliament that will give power to waive should be left with the power to determine how often they want that report. I think it is very fitting for us to stick on periodical rather specifying a particular period of time.

THE CHAIRMAN: Honourable Kabayo, what do you say?

DR. KABAYO PATRICK (Kassanda South): Thank you Mr. Chairman. I belong to Committee III. But I noticed that the original intention behind the minds of the people who drafted this formulation was to include the aspect of favour which is left out in the formulation that has been read out from the committee. The draft originally set out to empower a person or authority to waive or vary a tax and made allowance that in the exercise of that power, he should not do so in a manner that is in his favour or in favour of that authority. But if they have to do it, the draft proposed that parliament should approve it first. That was the original meaning. But we have to make a choice whether we are going to allow anybody given that power to sometimes be in his own favour. I thought the original meaning was to actually bar anybody changing the tax in his favour. That is one aspect. *(Interruption)*

THE CHAIRMAN: No, I do not think you are reading it properly. It is not saying that if you exercise in favour of yourself. They are saying, you have been given a power to vary or to waive. But exercise of that in favour of anybody including yourself.

DR. KABAYO: Mr. Chairman,I was stating two possibilities that we can choose from. The other one is to introduce aspect of favour in the formulation by the committee and say: *"Where a law enacted under Clause I of this article confers power on any person or authority to waive or vary a tax imposed b that law the exercise of that power in favour of any person shall be reported to parliament."* Otherwise then we have lost the original meaning of the text of the draft.

THE CHAIRMAN: Honourable Kaggwa what do you understand it to be.

MR. KAGGWA: Thank you very much. Mr. Chairman, the import of what Dr. Kabayo is seeking to bring is that the minister or whoever has power will report on the power he has been given and that is not the whole idea. The whole idea is to report on how much he has exempted but not the power because the power he has. So, his issue would really be absurd that he has to report that I have exercised this power. I do not think Parliament will be interested in the minister reporting as he used the power it gave him in the first place! It is interested in reporting the amounts of exemptions he has given. That is the concern Mr. Chairman.

THE CHAIRMAN: Honourable Musumba.

MR. MUSUMBA: Thank you very much Mr. Chairman. Two things I am worried about is constitutionalising a specific period of say three months, four months or even six months. Because then Mr. Chairman, we would put undue tension on

the Minister. Say, three months, I have spent 2 months and 29 days, if I do not rush to parliament it would be unconstitutional. It is for that reason, Mr. Chairman that we thought of saying that when he exercises that power he should be able to report to parliament periodically as shall be determined by law. So that the law of parliament determines or sets out the period in which this reporting will be made. Point number two Mr. Chairman, following the debate with respect to the word 'favour,' whether we should have favour or not. Mr.Chairman, I was wondering whether we could actually say the exercise of that power in respect of any person, not just in favour. Because Mr. Chairman, once you touch matters of taxation, then you are actually responsible and answerable to parliament! Whether you decide to exempt or to raise or vary or to, then you must be able to explain to parliament and parliament must be able to censor your action. Take for example, Mr. Chairman, supposing the exercise of that power is not favourable to me, it is so unfavourable. Would I not be denied the chance of my particular case being examined by parliament? Therefore, Mr. Chairman, maybe we could change the word 'favour' to 'respect.' Thank you Mr. Chairman.

THE CHAIRMAN: Honourable Kitariko. Then we summarise.

MR. KITARIKO ROBERT (Democratic Party): Thank you Mr. Chairman. I have worked in Finance and given exemptions. I do not see any problem in quarterly reporting because the Minister could actually copy a letter to the clerk of parliament every time he waives these taxes. So by the time you get to the quarter, they are available for compilation and report to parliament. Why are we worried about quarterly reporting? What is the problem about quarterly reporting? Every time you exempt, you can copy a letter to parliament.

THE CHAIRMAN: Now, let us isolate the issues here now. It is agreed that statutes passed by parliament imposing taxes could contain waiver and variation clauses. That is agreed and it is agreed that the power to waive and to vary could be imposed on the minister or the authority administering the statute in question. It is agreed that there should parliamentary supervision of that power and it is agreed that should be by way of report to parliament. It is agreed that we should do it either quarterly or leave to parliament. That is the only aspect which is left. There is a view that it is quarterly, there is a view that we leave it to parliament. I am suggesting that concerning approval, we leave it for the legal draftsmen to put in the appropriate words because we cannot draft it here. Is it quarterly or we leave it to parliament? *(Interjections)* You can see you are quite divided. Yes, Honourable Malinga.

MR. MALINGA: I think we could solve this problem quite easily if we said that the minister or authority should exercise that power by way of a statutory instrument and then that statutory instrument should be deposited with the parliament. - *(Interjections)*- Yes, as and when it is done, it is reported to parliament.

THE CHAIRMAN: In other words, he is saying that the minister should be given or the authority should be given power to exercise the waiver of the variation. That should be done by statutory instrument as defined in our laws and that instrument shall be laid before the parliament. We can then say within a specified period from the time of the exercise of that power. *(Interjections)* No, but if you are going to lay the instrument, then infact, that is a report to parliament because there is no better way of reporting to parliament than getting a gazette notice tabled. The minister stands up or whoever it is, that I hereby, lay on the table instrument such and such waiving tax, in favour of the people named therein by either the Revenue Authority or by me as a Minister in accordance with the provisions of statute such and such. That to me is a much more definite reporting to parliament than even just writing a letter which may disappear in the files. The only thing is this, that it is normal to say so that you are certain that from three months from the making of the instrument granting the exemption. Because then the instrument will state the person who has favoured, the nature of the favour and the amount involved. It must be one which complies with the statute which gave that power. In which case, we shall have actually reported to parliament. Honourable Kuteesa.

MR. KUTESA SAM: Mr. Chairman, it seems to me that we are putting too much detail in this clause. I would have thought that the method of reporting and the period reporting should be in the act of parliament that confers the power. To have to put it in this clause in Constitution, it depends on the case. For example, it may have the Minister for

Finance giving the exemption. There may be another authority. I do not know what this Clause envisages. There may be another authority that may not be able to do it easily by statutory instrument or may not come in a given period in the same period as the Minister for Fiance can do. So, why do we not leave it to the enabling legislation to determine, one, how often the report should come? Two, whether it is by Statutory Instrument or whatever or by resolution.

THE CHAIRMAN: I do not think there would have been a problem whether it is another authority. We should say somewhere that any department or body of government shall be the administration of a minister. So, there will always be a minister in charge of a body like that and can act on their behalf as far as parliament is concerned. But I think to finish this and go, we can leave that, the draftsmen will say that shall be reported to parliament in accordance with the statute granting power to waive or to vary the tax and then we leave it at that. Okay?

HONOURABLE DELEGATES: Yes.

THE CHAIRMAN: Agreed. Thank you. Dr. Kaberuka.

DR. KABERUKA: Thank you Mr. Chairman. Clause 3, we recommend that be deleted since we have already done away with the resolution because Clause 3 sought to define that the resolution should be passed by two thirds majority. I beg to move.

THE CHAIRMAN: But you had some other formulation. Or you are not coming in with any?

DR. KABERUKA: I beg your pardon?

THE CHAIRMAN: Were you bringing in some other formulation or that is all? You just wanted deletion.

DR. KABERUKA: No, a deletion because it refers to the resolution. In (2) - *(Interruption)*

THE CHAIRMAN: Okay. Agreed in view of the decision in 2, that completes 178?

DR. KABERUKA: No, we have a new clause. Mr. Chairman, after those three, my committee recommends that we introduce a new Clause which reads as follows: *"Parliament shall make laws to establish tax tribunals for the purposes of settling disputes concerning tax matters."* I beg to move.

THE CHAIRMAN: Agreed. So I put the question on 178 as amended that it stands part of this Constitution.

(Question put and agreed to)

THE CHAIRMAN: So now we have sorted out 178. We can go to Local Government and now look at 215. Honourable Katenta Apuuli had read out 215 (1). The only fear was lack of subjecting provision might appear in (2). Let us start with (1) first.

MR. ELYAU: Mr. Chairman, I have a problem in (1) the last second sentence called 'cess' and 'personal taxes.' 'Cess,' Mr. Chairman, according to what I know it is derived from cotton ginning. Now, how will Local Government determine cess? May I be clarified whether 'cess' means other things than what I know because normally cess is derived from lint cotton. I wanted more clarification with this word 'cess,' it is disturbing me. Thank you very much.

THE CHAIRMAN: The question is being raised with regard to it 'cess.' At the moment there is cess on coffee in favour of the Coffee Development Authority as well as there will be or there is cess on lint in favour of the Cotton Development organisations. Are we saying that the central Government is being removed from enabling these bodies to collect cess in favour of financing their activities?

MR. KATENTA APUULI: I thank you, Mr. Chairman. Mr. Chairman, cess used to be a tax collectable on produce by local governments and then it was hijacked by the Central Government since 1967. It was the strong feeling of the committee that this tax should be restored back to the producers in the village to benefit directly from this particular tax. To encourage them to develop those particular products in their areas.

THE CHAIRMAN: But Honourable Katenta Apuuli I have just given two examples. When the Coffee Development Authority was established, it was intended that they should collect a percentage of the export price of each kilo of coffee. For purposes of financing the organisation's activities

in the field of coffee research and coffee extension services without having to line up at the Treasury. In other words coffee should improve coffee and cotton should improve cotton. Now, if you keep cess only to the Central Government, are you saying that these bodies have to find another way or they shall have to re-name their imports to be of a different nature.

MR. KATENTA APUULI: What we are suggesting as a committee, Mr. Chairman, is that this collection should be restored to the local areas that produce those products. If today the Coffee Authority or Cotton Authority is dependent upon cess to survive then may be we should suggest that a certain fraction of whatever they collect should also be shared by the local people. The problem is where the cess goes to the Authority and there is no return. By virtue of experience these government corporations and parastatals have not really used the money to benefit the producers. They have used the money to benefit the managers of those corporations. That is why the committee had this view that something should be paid back to the areas that produce. If we need the money to maintain the authorities then may be we should ask those authorities to share whatever they collect with the local people. Who actually produce but get no actual benefit although the money is supposed to be collected on their behalf to benefit them but the money never benefits them.

MR. NGOBI MATHIAS (Presidential Nominee): Thank you very much, Mr. Chairman. I wanted to confirm what Honourable Katenta Apuuli has said that this question of cess was brought into being during the time I was Minister of Agriculture in order to assist the local governments and the areas to develop, in fact, assisting developing this production. There were certain responsibilities that were carried out by the local governments in order to assist in the production of the various 'cess.' Of course in this case it was cotton and coffee but you could also have another crop like tea or maize. If that becomes a big product or even matooke and things like that, you have a cess. I think it is reasonable and I can assure Honourable Members that this cess before it was taken over by the government, by the central government, it was a very useful source of income which assisted the budgets of the various districts. So therefore the Committee and I am a Member of Committee Four, the intention was to try and revive cess so that it can help the local areas. They can put a cess, say for instance the problem you have raised, Mr. Chairman, of the Coffee Marketing Development Authority. It is a question of a name. If they adopted the term cess for their own development they can easily have another term for the fees which they charge in order to help the development. But since this cess was known by the local governments it would be better that it should be charged. Fortunately we have passed the previous Article so that the different local governments will not be able to charge an excessive level of cess if it is governed by the Parliament. So we should not worry very much and I think it would be proper if the local governments, local administrations or district councils do charge a cess that will be within reason according to Parliament.

MR. KITAKA GAWERA (Bbale County): Mr. Chairman, thank you very much. Mr. Chairman, Honourable Mathias Ngobi has really given very useful information regarding this question of the cotton cess funds. Since at one time he was my Minister, the explanation he has given is quite adequate. But, Mr. Chairman, I would like to add one word or two of clarification to what the Chairman of the Committee had stated that the money which is earned from these cotton cess funds were predominantly utilised by the general managers or the managing directors for their own personal use. I think this is not a fair statement. This cess is supposed to be utilised by the organisation or the authority for that matter in the promoting and development of the activities of the authority. Since the Coffee Marketing Board which I chair has a representative on the Uganda Coffee Development Authority I can only say that this particular authority is discharging its duties very well. In fact, they are using the money very purposely on the assignment as stated in the Statute setting up this organisation. Thank you very much indeed, Mr. Chairman.

MR. BATEGANYA DICK (Bukooli Central): Thank you very much, Mr. Chairman. I have a problem with this Article and Clause (1) especially. It gives too much details but then that detail is not exhaustive. We have referred to rents, rates, relatives and all that but I have a feeling that in future there could be other sources of revenue for the local governments. How will these local governments accommodate them? For instance, a local government might put up a road or a bridge and it might wish to levy a toll to maintain this road or a bridge.

Under what section would they act? I would, therefore, wish to suggest Mr. Chairman that we delete some of these, we delete all that comes after taxes. We should say: *"Local Governments shall have power to levy, collect and appropriate taxes as Parliament may prescribe,"* to take care of eventualities and changes in the future. Thank you, Mr. Chairman.

THE CHAIRMAN: But do you not think Honourable Bateganya you are weakening the local governments? Because here at least we are saying that these are theirs and Parliament and some subsequent provisions can give them additional powers. Do you not think so?

MR. KAGIMU KIWANUKA (Bukomansimbi County): Actually, Mr. Chairman, I would like to inform the Honourable Member that if he was to read properly that local governments have powers to levy, collect and appropriate taxes. The tax to be collected by local governments shall include, I think that is a very simple English Mr. Chairman, but not limited to so other taxes can be added. Mr. Chairman, if you could allow me, what I was fearing some of these taxes scare me, for example, a death tax. Mr. Chairman, as you know most of our constituencies are in rural areas. If you are opening up so much of these taxes it is like getting out a lion out of a den to go and kill our people. Recently in Masaka, Mr. Chairman, there was a queer tax which was imposed and people are crying. Whenever I move in my constituency people are crying, in Masaka now bicycles have number plates and on top of that the Boda Boda's at one time they were required to pay I think Shs.200 as the other tax. Even these people carrying bunches of matooke, a tax was imposed and they had to boycott it. My fears have been catered for when you say that Parliament all these things must be subjected to Parliamentary approval. Mr. Chairman, I will appeal to Honourable Delegates to allow me to strike out some of these scaring taxes. For example, starting with death tax, then with the birth tax and marriage tax. Mr. Chairman, in the villages these taxes are very scaring.

THE CHAIRMAN: Honourable Kagimu Kiwanuka, I think you should not be worried. When you go to the D.C. to get married you pay a fee even now. That certificate you sign. When you talk of Death Duty, Death Duty is imposed on rich estates, it is intended to be a form of equalisation. In other words the attempt is to say you do not die and leave billions for your son and they just live without working for themselves so the State starts creating that sort of thing. It is never imposed. You are dead so they tax your bicycle or something like that. It is in a traditional sense of Death Duty.

MR. KATUMBA MATTHEW (Kiboga County West): Thank you, Mr. Chairman. I would like to inform Honourable Dick Bateganya that if a district identifies an area of taxation, it can apply to Parliament to be allowed to collect tax. Thank you.

MR. SEKITOLEKO SEBASTIANE (Bugangaizi County): Thank you very much, Mr. Chairman. I wanted to say something on cess, on cash crops. The main complaint, Mr. Chairman, in some of these districts producing cash crops is that they produce these crops but in the end they get nothing as a district. So if we let that cess stay in the district it really helps a lot. You know very well that districts spend quite a lot of money teaching the farmers how to improve such crops, to improve coffee or cotton. Currently quite a number of districts are engaged in teaching people how to preserve quality and so on. So it is important that if a certain amount of money remains in the district, if there is timber to be sold out. My other concern also is on some of these taxes. We should be very careful here to find a way how we can seriously control or limit the taxation of the ordinary man. We know very well that the districts very soon are going to have the responsibility of paying staff, of maintaining a district. Now, what is likely to happen is that the ordinary man is likely to be overtaxed by the districts so that they maintain that district. Thank you, Mr. Chairman.

MR. MUSHEMEZA ELIJAH (Sheema County South): Thank you very much, Mr. Chairman. I seek clarification from the Chairman of the Committee on this phrase, 'personal taxes,' because I do not know what the committee intended to mean, whether it is personal income tax. I may buy a soda and pay tax on that soda. Is that what we intend to mean here by personal taxes? In my view it is vague so I do not know whether they intended to mean personal income taxes. I seek clarification, Mr. Chairman.

MR. MULENGA: Thank you, Mr. Chairman. My concern is on Births, Marriages and Deaths. Although you explained to Honourable Kagimu

Kiwanuka that this was the fees we pay for registration of births and so forth. The way it is worded seems to suggest differently. It states the taxes that may be collected by local governments shall include, birth, marriages, deaths. Then later it talks of fees. Now one interpreting would interpret that fees is a different category from the taxes to be levied to be collected. Do we actually mean fees for birth registration, marriages registration and death registration? If however as it was earlier stated that this death tax may be on the estate of rich people, this is introducing a new tax. I wonder whether we would be right to introduce a new tax now through this clause instead of leaving it to Parliament in future to decide first of all whether we should introduce this tax. Thirdly and lastly, Mr. Chairman, I was wondering why after saying: *"The Local Governments shall have power to levy, collect and appropriate taxes,"* we go on to say that 'the taxes to be collected only' instead of saying, 'to be levied and collected.' Whether that was deliberate or an omission. I think it would be more appropriate to say 'and the taxes to be levied and collected by Local Governments.'

THE CHAIRMAN: Honourable Delegates, can I suggest we do it this way because you see there is a mix up in concept here. Rents, that can be rent on land, I do not know whether that includes tax on buildings or rent but can be rent on land. Rates are also rates on land and can extend to rates for services like if they were to run a sewerage system or a water system. They can chose to strike a rate to be collected for the amount of water or sewerage that is collected by the various local governments. Royalties can be imposed by the Government of Kasese on those who have won and extracted cobalt from their area or if you cut and win timber from a place you can impose timber royalties and so on.But when it comes to births, marriages and death, those actually are fees for the various exercises that you go through. As I did try to explain this morning, in the general understanding of taxation unless I am corrected by those who are experts, a tax is a mere import and you do not have to get value immediately from it. Of course you can get it generally but as distinct from rent because you get value, rates because you get value, royalties because you have given away something,then births and marriages and so on. It is fees for the services rendered to you because they have registered the birth of your child and that certificate is going to be of value to that child to get a Passport in future. A marriage, because you have happily come together and the State has recognised you. Death, I think you know that they collect fees for reporting death but I guess you have to get a record entered. Then Stamp Duties because you are transacting on land. Levies would normally be imposed if for instance you have a stabilisation scheme or crop and you want to retain some value for purposes of whatever it is. Normally it's a levy or if you have industry board which you would like to set up a management levy for ensuring that the industry run, you can have levy. So that is understandable but to stand fees. Of course then, fees can be given for licenses, you may have to pay a fee to get a license. So I do not see why you set a fee and then licenses and so fee would apply to births, marriages, deaths, licenses either for roads or for registration of vehicles and so forth then cess is on crops as it has been explained. I think 'personal tax,' what they mean is head tax which is by virtue of being a human being within a certain area of a certain age you must pay taxes. Some call it poll tax, others call it graduated tax but eventually it boils down to really being a tax on the fact that it is you. It can either be based on income or it can based on the fact that you are there. So my view is, we can approve this but it can be re-drafted to bring out the fact that fees standing separate from births, marriages and deaths and licenses could bring out the meaning that these heads were intended to be taxed separately.But that also they can have been fees imposed in addition to the tax on births, marriages and deaths. I do not know whether I am being clear.

MR. OWOR CHARLES (Aswa County): Mr. Chairman, I would like some clarification. I understand when we talk about power to levy, collect and appropriate taxes by local governments and that taxes can be collected on births and marriages. Because whenever a birth is registered you pay some fees and whenever there is a marriage the person in charge of registering the marriage also levies some fee. But I would like more clarification on what actually happens or how the committee proposes that fees could be levied on death. I want to be clarified on this matter.

THE CHAIRMAN: In fact I was going to ask you as a practitioner and during the jurisdiction whether Honourable Mulenga as a senior counsel, has come across fees being collected by the Attorney General's Department.

MR. MULENGA: Mr. Chairman, there is the Department of Registrar General which was decentralised long ago but the decentralisation seems not to have worked. The Registrar General among other things registers deaths, registers births and registers marriages. My recollection there is no fee payable on registering or reporting deaths but probably for a certificate, there is a death certificate. You pay for the death certificate, birth certificate, and marriage certificate. But there is no other tax, that has ever been imposed on the act of birth or the act of marriage or the tax, on the state of the deceased person. That is why, Mr. Chairman, I agree with you that if we must retain them there we must link the word 'fees' to those three and save the registration and fees for licenses.

THE CHAIRMAN: You should be specific, fees for licenses, fees for registration of deaths, births and marriages so that they can choose to waive the fee directly on the death itself. You know it is also dangerous to state that we should ask for fees on deaths, births, marriages as if those are the only ones which are available for collection of fees. It would be better to state fees for services.

MR. WANENDEYA: Mr. Chairman, I think we may be misunderstanding the committee's recommendations. Mr. Chairman, I know that in some countries in Europe the city or local authorities have those kind of taxes like death taxes. But these are mainly to cover the cost of burying somebody in case relatives are not available. Therefore, in our own situation as an example, you find that we pay *mabugo* when somebody dies and that is also some kind of death tax to those who are still alive. So, I do not see anything we should deduct from this recommendation, Mr. Chairman. I thank you.

THE CHAIRMAN: No, we are not saying that we want to remove them. But what we are trying to say is that the way it is written is not quite right. There is something lacking. The way it is written, it is suggesting that there can be a tax imposed on the Act of marriage, death, birth. But I think what they are meaning is fees for registration of birth, marriage, or death certificate and so on.

MR. AGGREY AWORI: Mr. Chairman, I would like to agree with you about reducing all this to the term 'fees for services.' But I would like to suggest that we call them 'fees for administrative services,' because the kind of services we are thinking of along these lines will be the services that the local authority renders in the course of this administrative function. I certainly agree that if we undermention this, we would be leaving out possible services that might by law require the payment of fees in future. If we call it fees for administrative services, it will cater for any other services that eventually might arise. Thank you.

MR. WASSWA LULE: Thank you very much, Mr. Chairman. Looking at this Amendment, basically all it does is it tries to give the local governments the powers. I think the mistake in drafting this Article was going ahead to enumerate some of these issues because it can never be all inclusive. We should really have stopped at, 'local government shall have power to levy collect appropriate taxes,' and that should have been the end of that. That would be adequate.

Now, going down to death duties, I think I would like to point out what death duties are. Death duties are not taxes because somebody has died or fees to register deaths and things like that. Death duties are taxes on the estate of the deceased when it is being distributed. For the State has a stake as well as the inheritors on the estate. So, when the estate is being distributed the taxes might be say, 30 per cent or whatever and the state takes that much and some of the properties have to be disposed off to meet those duties.

THE CHAIRMAN: But do you think this is what was meant by the drafters of this? I think they meant, for instance, if you want to be issued with a death certificate of a relative, you pay a fee for that certificate because you need it in the administration of the estate.

MR. WASSWA LULE: What the drafters meant is what is in the caption which is the power to levy taxes. Now those fees are not taxes. So, this is why I am saying that by trying to enumerate these things they went of course. Power to levy taxes is whatever taxes are enumerated saying the finance act. These local governments have the power to go and collect these taxes and then distribute them according to how they are supposed to be distributed.

THE CHAIRMAN: But I think there was also the attempt to make sure that these local governments have some identifiable heads of taxes. Otherwise if you leave it levy taxes, and we have said that Government has power of taxation and taxation policy, then we leave them at their mercy.

MR. WASSWA LULE: You see that is the crux of the matter, Mr. Chairman. If it was a question of giving them certain heads of taxes, that has got nothing to do with levying and appropriating. That is the power to make Laws to set the rates of taxes. That is a different thing from levying and appropriating.

THE CHAIRMAN: Can we not split one into two? We state that local governments shall have power to levy, collect and appropriate taxes, fees and other charges in accordance with this Article. Two, we say, those taxes shall include but not be limited to, then we try to state those. Then we go on to say, they will pass Laws in respect of that, in other words for setting rates.

MR. WASSWA LULE: I think that will be a better way of formulating it.

MR. KAVUMA STEPHEN (Kyadondo South): Mr. Chairman, I have difficulty with the whole philosophy behind this Provision. We are falling into the temptation or the trap of behaving as if we are Parliament. In my view, what we needed to put in the Constitution is the power for the local governments to impose and collect taxes. But once we start going into details of what taxes and what fees, we are really behaving as if we are Parliament. Mr. Chairman, when you think about some of these taxes we are enumerating like the cess, there could be a principle which should be addressed very thoroughly in good time by people concerned with legislation. There could be a principle that once you allow local government to tax, say, crops you may endanger the overall economic policy of the country by making final products from the raw materials uncompetitive on the market. I will take the example of tobacco. If there was a tax collected on tobacco, you could find that tobacco when it comes to B.A.T for purchasing, B.A.T may find that it may be cheaper to import tobacco from somewhere else. So, Mr. Chairman, I think we are really not being fair to ourselves. We are going into details that would require a lot of time by parliamentarians. I think our duty should be provided for a constitutional power to the districts to levy taxes and then the details should be left to Parliament. Mr. Chairman, in that vein I think actually we should have gone as far as giving power to local authorities and stop just at taxes and say, 'local governments shall have power to levy, collect and appropriate taxes,' and then we leave the details to Parliament.

THE CHAIRMAN: But you see, what you are raising we talked about this morning. We talked about 178 which we have just approved, which says, 'no one can levy the tax even that mentioned in the Constitution except with the approval of the Parliament.' We also subjected the Central Government power on taxation and tax policy in the Constitution.

MR. AGGREY AWORI: Mr. Chairman, I would like to propose that we need to formulate this particular provision with a view to achieving two aims. One is empowering the local government to levy taxes. This is one way by which it gathers revenue for administrative purposes. But that is not the only source that we need to empower local governments for the collection of revenue. The one aspect which may not necessarily fall under the terminology of taxation is the idea of collection of fees and getting money from licenses. I think if we only provide for the power of the local government to levy and appropriate taxes, we may not be covering the aspect of gathering money through fees. I would therefore, like to propose that we formulate in such a way that we say the local government shall have power, One, to levy collect and appropriate. Then two, to collect revenue from the provision of administrative services. Those two, Mr. Chairman, I believe will cover all the aspects that local governments will ever think of. Thank you.

THE CHAIRMAN: So that we say local government shall have power to levy, collect and appropriate (a) taxes, (b) fees and other charges for services rendered by the local government.

MR. AGGREY AWORI: Mr. Chairman, I have no objection to that alteration because I think it still covers the two aims that we talked about.

DR. OKULLO-EPAK (Oyam County South): Mr. Chairman, I think when we dealt with schedule 4, we were able to specify the type of taxes reserved for Central Government. When it comes in this case, apart from what may in future feature as residual from what is reserved in Central Government, we are familiar with kind of taxes normally charged by local authorities. I can only see a bit of difficulties in this formulation in that we have mixed type of taxes with instances of taxation. We have clearly stated types of taxes or sources of revenue from rents, rates and then we departed to

specify areas which should be taxed and start births, marriages, deaths and stamp duties. Otherwise the rest are items or types of taxation. Maybe, Mr. Chairman, we can do ourselves justice by removing these areas which are taxable or which should be taxed like birth, marriages, deaths. We know that in their cases it is normally fees which are charged. The confusion is arising because we have mixed up types of taxes with instances of taxation. If the instances can be removed then we can remain with very clear prescription of the nature of taxes that can be charged by local authorities.

THE CHAIRMAN: Can I suggest one thing. This thing is very difficult for us to draft it here because we are going to mix up concepts like it had been mixed up to appear as if we have substantive taxes on deaths and births in addition to fees for licenses for registration of deaths and births. It needs to be drafted in such a way. I was going to suggest that Honourable Charles Owor with the assistance of Honourable Okullo Epac-

MR. BIDANDI SSALI: Mr. Chairman, I have been itching for some information and clarification. First of all a place like City Council has been collecting fees for registration of births. But what I wanted to clarify and request the Committee not lose sight of is the need to entrench the right of the local governments to levy taxes in specific areas instead of leaving it.

MR. KATENTA APUULI: Mr. Chairman, I was thinking that may be Committee 4 can be represented by Honourable Okullo Epac.

THE CHAIRMAN: Members are free to make representations to the committee.

MR. KATENTA APUULI: Mr. Chairman, Item 16, former Article 213 now 216. The Committee recommends that former Article 213 be amended to read: *"Clause I - Parliament shall, by Law provide (a) for the taxes that may be collected by District Council for or on behalf of the Government for payment into the consolidated Fund and (b) for a District Council to retain for the purposes of functions and services a specified proportion of the revenues collected for or on behalf with the Central Government from the District.* 'Mr. Chairman I beg to move.

MR. KAGIMU: Mr. Chairman, I would like to amend Clause (a) to read: *"Parliament shall, by Law provide for the taxes that may collected by local government for or on behalf of the Central Government for payment into the consolidated fund."* Mr. Chairman, I do not know whether the District Council is going to collect taxes. I thought it is there as a Parliament. I thought it is there as a Parliament. It is as if saying that Parliament is going to collect taxes, may be that was a elapsis linguer for the committees. So with due respect I beg to ask the indulgence of the chairman to allow me to move, that it may be collected by a local government. Parliaments do not collect taxes, Mr. Chairman. Then again for (b) to read that for a 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 central government from the district. Mr Chairman I beg to move.

THE CHAIRMAN: Could you repeat it for my benefit.

MR. KAGIMU; Mr. Chairman, I was moving that Clause (1) Article 216 reads: *"Parliament shall by law provide for the taxes that may be collected by local government,"* in the report it reads district council. District council is like a Parliament, and Parliaments do not collect taxes they just legislate, Mr Chairman.So to substitute the word 'district council' with 'local government' and then for or 'on behalf of the central government for payment into the consolidated fund.'

THE CHAIRMAN: You do not have to put the word 'central' there because it is defined government of Uganda.

MR. KAGIMU: Okay, then for (b) to read again instead of district council to put local governments. I beg to move, Mr. Chairman.

MR. KATENTA APUULI: I have no difficulties with that, Mr. Chairman.

MR. NDEGE: Mr. Chairman, with due respect to that, I think my amendment goes furthest to all that. We should delete (a) and (b) may be if you could allow me I go on. I do not know what you think, Mr. Chairman.

THE CHAIRMAN: No, you should not move unless if you are supported fully.

MR. NDEGE: I am seeking that we delete 216 (a) and (b); this is a function of Uganda Revenue Authority or its agent. I do not see why we should constitutionalize collection of taxes. I wish to move that we delete Section 216 (a) and (b).

THE CHAIRMAN: Is that seconded.

THE DELEGATES: No.

THE CHAIRMAN: Honourable Ndege it falls by the way side. I can't give you the Floor.

MR. MALIRO: Thank you, Mr, Chairman. I am seeking clarification from Honourable Kagimu on his proposal. When he proposes substituting district council by local government, I do not know whether he puts in consideration that fact that in our context local government includes urban councils, and sub-county councils. Now we are talking of collecting funds to be submitted to the consolidated fund.Does he meaning that the sub-county also should be empowered to collect some taxes and remit them to the consolidated funds. What I know is that all the funds collected by a sub-county are collected on behalf of the district and remitted.The district but retains just a percentage. Now if we put local government, we are saying the urban authorities will also collect money and remit some to the consolidated fund. So will be the sub-counties. So I am wondering whether you can get a better formulation which will exclude sub-counties which are also local governments in our context as far as this chapter is concerned.

THE CHAIRMAN: But if you look at the schedule 4 that we approved it sets out services which are those of the central government. In schedule 4, the government is free to charge fees and other charges for provision of those services or even taxes. One other thing is that Honourable Owor will have to look at the destination of tax. Whether we want to stretch tax to include fees, rates and other charges so that we just choose that word generally in those terms, but that is just something that he could look at. Some find it that way others they narrow it down. But for instance, if they decided that the district government in Fort Portal should collect fees for selling ammunition or short guns or even providing services, collecting monies that are charged in respect of entry or issuance of trade permits which can be collect by the district council. But you may go to Busia and you find that the sub-county there if it is well set can collect for these border permits people going to Kenya and coming back to trade. That can be collected by the local government not this government but that item of local government. What if one is saying that you can collect that, remit it to government but also you should be allowed to keep a portion either for your cost of collection or as a government grant or revenues I do not see difficulty there. What he was saying was that, as it is written now we are leaving it to a district council, can't a municipality for instance collect taxes on behalf of central government? Can't Jinja municipal council collect taxes on behalf of central government in respect of some areas where they think that it is better place to collect than to set up a government bureaucracy to run parallel with what they have there? They are doing it in some respect anyway. I think this is what this one was meaning really.

MR. WANENDEYA: Mr. Chairman, I have got an amendment on 216, 1 (b). It has been seconded by some of the Honourable gentlemen of this august House -

THE CHAIRMAN: You move it first and they will announce

MR. WANENDEYA: I move, Mr. Chairman, that be amended to read as follows: *"For the purpose of its functions and services at least, 40 per cent collected by the central government shall be retained in the district from where it was earned."* Mr. Chairman, what I mean over here is that, if coffee grown in Mbale district and we pay some 30 million dollars on the average per annum, part of that money should be retained by Mbale district administration for its development programmes, Mr. Chairman. Therefore, I beg to move.

THE CHAIRMAN: But Honourable Wanendeya, I do not see any seconder. Can I hear from the chairman of the committee.

MR. KATENTA APUULI: I would like to request Honourable Wanendeya to realize that this article is dealing with delegation of authority. The authority belongs to the central government but the central government can delegate the authority to the local government. If the central government realizes that they will lose a lot of revenue by this delegation, they will not delegate. So it would not help the cause of Honourable Wanendeya by

putting a fraction here. When we consulted with the experts from all sorts of sources, we were advised not to entrench specific percentages. We were advised, that matter should be flexible so that from time to time, those percentages can be changed without having to amend the constitution.

THE CHAIRMAN: Honourable Wanendeya, what you are saying is, there is an export tax on coffee. Now that is separate from what they looking at here, and in case you have not been seconded anyway so we can't proceed with your Motion.

MR. WANENDEYA: Mr. Chairman, I have got the amendment which has been circulated widely, but if he is saying, and with your advise that it should come under a different article, I will be very grateful with your indulgence and that of the chairman of the committee. But, Mr, Chairman, this is an important article or amendment. Simply because, Mr. Chairman, if we are saying that we are decentralizing then we will never build our country properly until this money remains at the grassroots rather than just for the central government in some cases to misuse those funds and as a result the country-side does not develop.

THE CHAIRMAN: Honourable Wanendeya if I were you I would wait for Honourable Charles Owor's report which should come to us soon. There was a provision for sales, if sales is included, then sales is something that can be imposed on coffee by Bugisu District administration as would be on cotton. As would be on other crops. And once you talk of sales then it is a question of what rate of sales, that is where Parliament should come in. Otherwise this would be a new concession which had been taken away, that I think would be the one where you should argue that it must stay. Export tax is different matter as long as you have sales then it becomes a different matter.

MR. WANENDEYA: Mr. Chairman, I will give in to your suggestion and advise, but Mr. Chairman, the local governments must retain a portion of the money collected. Whether it is export duty or we call it sales there is nothing. Anyway what I am trying to get at is that, we better get some of that money in order to develop our districts. I thank you, Mr. Chairman.

THE CHAIRMAN: Honourable Members, Honourable Kagimu had suggested in 216,1 (a) and (b) that for the words appearing as district council we should insert local government. And with that, variation, I take it that we agreed to paragraph (1) of 216. There is a proposed new Clause (2), where is (2)? Honourable Katenta Apuli why do we have 216,1, where is 216,2?

MR. KATENTA APUULI: I do not know why it is, like that, Mr, Chairman, may be it is a problem of printing but I do not see a Clause (2) to that.

THE CHAIRMAN: So we strike out the (1), it is 216 (a) and (b) and having amended as we have, I can now put the question on 216. I now put the question.

(Question put and agreed to)

MR. KATENTA APUULI: Article 217 Clause (1). The committee recommends that former Article 217, 214 be amended to read: *"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 block and equalization grant to local government."* Mr. Chairman, I beg to move.

MR. NDEGE: Mr. Chairman, we are looking at decentralizing and sharing resources between the central and local government. Why is the President here in this Article 217, he can present the Parliament proposals. It is my view that we must have what we call minimum percentage which must be transferred to local government. I think this is a good article though experts said it is not. I wish to suggest and propose that we add the following on that article which shall in any case not be less than 50 per cent of central government revenue collection, but net of foreign debt obligation.

THE CHAIRMAN: But Honourable Ndege have you read the proposal for (2)?

MR. NDEGE: I have read it that is why Iam saying should be proposed. I am proposing that (2) is deleted and we retain just that percentage and then mete of the whatever foreign obligations they may have.

THE CHAIRMAN: Could you read it again.

MR NDEGE: So the article reads that: *"The President shall for each financial year in accordance with this constitution present to Parliament proposals as the monies to be paid out of the*

consolidated fund as block and its equalization grant to local government which shall in any case not be less than 50 per cent of total government revenue collection, but made of foreign debt obligation." I beg to move, Mr. Chairman.

THE CHAIRMAN: He is seconded by Honourable Byakika. Let us get Honourable Ndege to justify his Motion, then I will give the Floor to other people.

MR. KATENTA APUULI: I do not quite understand why Honourable Ndege would not move in Clause (2) which is talking about the same thing. Why doesn't he seek to amend Clause (2) rather than Clause (1) which merely sets the principle. Because Clause (2) says: *"The aggregate of block and equalization grant specified in Clause (1) of this article shall be calculated to maintain at least a constant percentage of the national recurrent net of debt service. That percentage shall increase by a reasonable and comparable percentage for every one per cent rise in the ratio of the national recurrent budget net of debt service to gross domestic product."* Why didn't the Honourable delegate seek to move under (2).

THE CHAIRMAN: What he wants@ is to take the 50 per cent of net,the government revenue, he doesn't want to go into percentages relating to gross product and all the rest. I think that is why he wants to lead (2) and just take 50 per cent of net government collection.

MR. KATENTA APULI: I concede, Mr, Chairman,

MR. NDEGE: Thank you very much. Mr. Chairman, I think this is a very fundamental article. We have been trying to tell government over the last three years or four years that monies should be allocated in block to local administrations on a fair basis. Government has found it very difficult to part with money in form of grants and services. That is why I think we have to make a very fundamental decision here that,if we are talking about decentralization we must guarantee a certain percentage of how much of this money which is being collected at central. Today we talk in terms of 29 billion out of 46 billion which is collected is customs duty. 11 billion is in form of exercise duty, or most of the money which is collected from the *Wananchi* goes to government. They are saying we are decentralizing, if it was a Federo status then percentages would have been worked out. Now since we are saying government shall control most of revenue and taxation policy. So whatever is collected by government we must guarantee the *Wananchi* a certain percentage like we have done with the district. We have said 50 per cent of graduated tax remains at RC 111 and it has done so much for the rural areas, services which the districts would not even give. There been so much development since we put in this provision. The same way we must now force government to part with part of the income it has collected on behalf of the people. Because all this tax we are talking about is collected on behalf of the people for administration, for improvement of the people not just in town but rural areas. Therefore I have a mandate from my people that they must be guaranteed. I am sure that each every delegate when you are talking to your people that we are going to decentralize, you tell them we shall guarantee that there will be development in your rural areas. There is no other way other than guaranteeing this, saying a certain percentage of this money must be guaranteed to the rural areas. So it is that spirit, that already we have as tax story in the decentralization act. The monies which we have left at RC 11 which has done so much tremendous development in the rural areas that we should also force government which has failed to go to each and every area except for some recent *entandikwa*,non-starters scheme. We should by law tell Parliament and government how much percentage the man from whom we collect money is guaranteed.

THE CHAIRMAN: But could you please wind up you have already said that.

MR. NDEGE: So I wish to say that 50 per cent of the net money after taking off our foreign obligations,because we cannot do anything about it. Section 2 why I am seeking deletion is, a lot of jargon which means exactly or moreless what I am talking about in two or three words. I am proposing that 50 per cent 50 per cent of net revenue after taking into account our foreign obligation should go to the district. The district should in turn send money to the people who generate this money, I beg to move, Mr. Chairman.

MR. MIGADDE LUBULWA (Katikamu South): Thank you, Mr. Chairman. Mr. Chairman, actually the idea is good, and I would have supported it. But I would imagine it is too early to jump

to a specific percentage. Mr. Chairman, I am comfortable with the following Clause, because actually the following Clause, Clause (2) basically says what he is trying to say. Except that it does not come out with a specific percentage. Mr. Chairman and Honourable Delegates, to me the idea is good and Committee 4 realized it. But to jump to a percentage before you have critically analyzed the income structure of the country might be too dangerous. The idea I agree with, but I think this figure of 50 per cent might be dangerous we need thorough study of our economic policy. The point Mr. Chairman, I am emphasising here is that, the idea is good, the principle is correct and committee 4 realized it and put it here. But for us to be able to jump to a percentage arbitrary is wrong. For that reason, Mr. Chairman, I oppose the percentage.

MR. NASASIRA JOHN (Kazo County): Thank you, Mr. Chairman, I do oppose the amendment by my Honourable Friend and neighbour here for only one main reason. While a principle of sharing the funds between the central government and the local government is okay when he constitutionalises a fixed percentage, it puts a central government in difficult situation.In case financial demands from time to time demand that the central government needs to spend more than 50 per cent for certain reasons. Let me give one example. Suppose the country is at war and the financial need at that time is that, we need more money for our own security and defence. Does Honourable Ndege mean that the government will have to go,try and amend the constitution in order to make sure that it does not contribute 50 per cent of the net of its income after debt servicing.So as to be able to buy the required instruments to defend the country? Honourable Ndege's amendment is dangerous and should be opposed. Thank you, Mr. Chairman.

MR. KITARIKO: Thank you, Mr. Chairman. I believe the block grant must be for specific services if you want to say so to enable government to undertake new responsibility in the process of decentralization. You can't assume that perhaps Iganga District will get 50 per cent like Kabale District. Suppose Iganga District is richer than Kabale district, you can't assume the same portion for decentralized services. Therefore, it is a matter of discussion, I believe between local government and central government how much we get. Whatever functions are decentralized from the centre to local government should be covered by block grants, and that is the best for it.

MR. BYAKIKA: Mr, Chairman we have always emphasised the fact that in making this constitution we should have a definite formula for sharing out the national cake. This is now the appropriate time when we must determine how we are going to share the national cake. I support Honourable Ndege's Motion. Everybody is waiting to hear us give the news that we have come out with this and that from the constitution making. The cake is known because we know what the revenue of the government is every year. We know the income of government every year this is not a hidden aspect of finance, and we know what government requires for servicing national debts. The amendment is saying that after considering liabilities on national debts, debt servicing, whatever net is left should shared out between central government and local government. Local governments have been given under decentralization a lot of responsibility. They are going to have to manage services which have hitherto been managed by central government. For instance if you take education, primary education being left to local government is going to demand a lot of money. Right now primary schools have not been built, children are studying under trees, that is why in rural children are not performing well, because the facilities are very poor. This is a time when local governments should get their share from the taxes that people pay to go and develop the services in rural areas. I think it is not difficult to work out what the total revenue of the country is. We can determine that and then we say the net after the liabilities can be divided out at a rate of 50 per cent to the local government. This is a very reasonable percentage and 50 per cent which is left as debt to central government should be able to allow central government to manage the services that are left with the central government.

MR. MWEBESA FRANCIS (Presidential Nominee): Thank you, Mr. Chairman. I stand to oppose the specific percentage of 50 per cent. Because as the previous Member has just said, after taking off the national debts, if it so happens that what is required to be sent down to the local government is more than 50 per cent looking at the council's needs. If you fix a percentage of 50 per cent, it will not be possible to pass on more money to these local governments that have been given more responsibility Mr. Chairman. I would suggest that a certain percentage which will be ascertained of course, we assume that Parliament knows that most of the responsibilities have gone down the

ladder. We assume that Parliament will decide a percentage which might be more than 50 per cent. But if we constitutionalize it here and say that 50 per cent, it will be very impossible to satisfy the needs of these responsibilities that have been given the these lower bodies. So I stand to oppose the 50 per cent idea.

PROF. NSIBAMBI APOLO (Presidential Nominee): Thank you, Mr. Chairman. The amendment might appear to be tantalizing to most of the people present here. But I would like to mention that the state in Africa has not performed, it has not actually delivered. Consequently there is paralysis at the moment, and the new approach now is to go down to the civil society. Yesterday I attended the on-going conference of APAM, of course after I had completed the deliberations here. The donors were saying now they want to go to the civil society. They are fed up with pumping money in a basket which is leaking, and that is a reality before us. We have another crisis namely that local authorities have not been given buoyant sources of revenue. Consequently when they face inflation and other problems they cannot perform, they are unable to recruit skilled personnel because they do not have money. So that is why they are in vicious circle. There has been a persistent problem in equitable sharing of the National cake, that is really the crisis facing Africa. I speak in terms of Africa because these are not only Ugandan problems, these are continental problems, and they are being addressed globally. So let us not localise ourselves, let us globalise ourselves, so that we might solve the problems being tackled. And this amendment is trying to draw attention to a persistent problem where are willing to perform but they cannot perform and they lack the capacity. They also lack the civic capacity to influence allocation from the centre that is another dilemma facing the people at these local levels. And that is why initially he is starting with a figure of 50 per cent. In some countries it is larger, it is 60 per cent. But of course, one could argue that we are less developed, we are not as developed as Denmark. But the question is, when shall we start the positive journey to the moon? We have to start now. That is why he is now constitutionalising it in order to ensure that we start today. We can take the risk of constitutionalising the formula. I know it has problems, but it is a formula being brought because of the extreme desperation. So we have now to make a start after all constitutions can be amended. So I would like to support the amendment strongly.

DR. BYARUHANGA FABIUS (Kitagwenda County): Thank you, Mr. Chairman, I oppose the Motion. I oppose it not because I am against the spirit of the Motion, but because I am against arbitrary way the mover of the Motion has come up with this percentage of 50 per cent. The Mover has not in any way tried to explain to us why he feels that the 50 per cent is what the local authorities require and why he feels that the left over 50 per cent will be enough for the functions he has left the centre. Mr. Chairman, the speaker seems to think that the functions we have left at the centre have no bearing on the livelihood of the common man. That is a very wrong principle to stand on. Mr. Chairman, we left about 28 functions at the centre. Among those is security, the judiciary, foreign relations roads, national commissions and so forth. I believe the functions there perform are very essential for the welfare of this common man. They are so essential that in their absence, this common man would not even be able to utilise this 50 per cent Honourable Ndege is trying to send to him. In my view, the Clause (2) of the this article is adequate, we are - because it really -*(Interruption)*

AN HON. DELEGATE: Point of order. In view of the importance of the subject matter we are discussing, Mr. Chairman, is it in order for the Assembly to continue debating without a quorum.

THE CHAIRMAN: Honourable Byaruhanga, go ahead.

DR. BYARUHANGA: Thank you, Mr. Chairman. In my view, the Clause (2) of the present Clause is adequate. It guarantees us of a formula that future governments will always use to give block and equalization grants to local governments. And we must always remember that these Parliaments which we shall have in future are going to be made of the elected Members from these very districts we are trying not to defend now. I believe that future Members of Parliament will consider the welfare of the common man as important as we are considering it today. They will be in position to give the common man his share. Because if we went today by this 50 per cent business, we would be in very unfortunate situation. For example this financial year I have the figures here. This is Honourable Mayanja's Budget speech of the 16th June, 1994, he hopes to raise 472 billion minus the 200 billion for debts servicing leaves 274 divide that by 2, that would give us about 135. Now you leave 135 billion

at the centre, the budget for army this year is 69 billion, the budget for NRC is 14 billion for the judiciary is 4 billion. Now would the government survive or it would get paralysed and collapse. So with those few words, Mr. Chairman, I wish to beg Honourable Ndege to withdraw the Motion since he has given the message that his people gave him but which people were not very scientific in approaching these financial matters. *(Laughter)*

MR. KISEMBO MULEJU (Burahya County): Thank you, Mr. Chairman. Mr. Chairman, I rise to strongly oppose the amendment. Mr. Chairman, the amendment is intended to actually paralyse the government. Because as the other delegates have already said, there are certain functions the government has to plan and if it has to plan those functions effectively, there must be money which the government will have to use. First of all, the government in place will be planning for some for these districts in this country. There are certain projects e.g National roads, one delegate has said about the army. Of course we cannot go without security, once insecurity comes in definitely the government has to spend money. There is these National Hospitals, the government has to buy a lot of drugs and other necessities to make sure that the people actually get treated. Mr. Chairman, considering all those points, I strongly oppose the amendment. Thank you, Mr. Chairman.

DR. OKULLO EPAK: Thank you, Mr. Chairman. Mr. Chairman, I think let us look at the spirit behind this amendment. Mr. Chairman, this amendment is trying to be more specific than the provision in Clause (2). Otherwise the intention and the purpose of this amendment and what is now contained in Clause (2) are basically the same. Mr. Chairman. This amendment is trying to prescribe a specific percentage, which Clause (2) does not attain. Furthermore, Mr. Chairman, this amendment particularly this provision in the constitution can be considered as revolutionary on the operation of block grant system which we have had so far. I think this provision, Mr. Chairman, now demonstrates beyond doubt that we are serious about decentralization and transfer of responsibilities to the lower level. We attempted, Mr. Chairman, in Committee 4 to prescribe a percentage, we actually tried to do a research on the basis of the previous budgets to see how much of district level projects which were handled from the central government level, from ministries cost. Unfortunately, Mr. Chairman, we were not able to come up with most reliable statistics, the data was varying from 5 per cent to about 40 percent, Mr. Chairman and therefore we decided to abandon specifying a percentage. On the other hand, Mr. Chairman, we have experience from developed countries which allocate resources in this manner that it varies and goes on up 60 per cent. So even being on a very crude basis, the 50 per cent being prescribed may not be too far from what would normally be expected. What are we talking about, Mr. Chairman? We are talking about the total national cake minus debt servicing. 50 per cent of which would be designated for allocation to 39 districts for instance the present 39 districts or the number of districts that will be in future. Let us also know that in each district there will be as many sectors as there will be at the national level. The 50 per cent remains at the national level will be allocated to 20 or so ministries which represent sectors. To me, Mr. Chairman, a 50 per cent division of national cake does not deprive the central government of revenue particularly if we know that most of the services and functions that were executed from the national level will after this be executed from the local level. So the 50 per cent will remain for government to execute those projects in activities that have remained at the national level. We were however, not able to rationally cost the kind of activities and even the volume of activities that will ultimately be transferred to authorities. So, Mr. Chairman, I am quite sympathetic to this Motion, but of course, oblivious of the problems of prescribing a specific percentage because of lack of knowledge. However, this is also I would presume the kind of situation which Honourable Wanendeya was trying to bring. Honourable Wanendeya's intention was that, a certain percentage of national revenues derived from districts should be retained. But this is saying all the money collected from the district for central government will now be allocated from there, from the national level. Whereas Honourable Wanendeya was trying to achieve it from the root. Mr. Chairman, just as we already operate a 50 per cent share of revenue between district councils and sub-counties. I would find it very difficult to imagine how they arrived at those 50 per cent in terms of districts and sub-counties. I think Honourable Ndege is not far from that kind of thinking. Because we have already somehow decided a 50-50 per cent share between district council and sub-county council. Mr. Chairman, I still think that the prescription of not less than 50 per cent would be reasonable. As

a matter of fact would be very reassuring to district councils and local authorities that we have come here to discuss decide on decentralization in a more serious and pragmatic manner. I therefore, Mr, Chairman, support this amendment. I thank you very much.

MR. TIRUSASIRA KATONGOLE (Bugabula North): Thank you very much, Mr. Chairman. Mr. Chairman, on the same grounds like the previous speaker I think we should be very objective. I think Honourable Ndege's amendment is in line with what we have already passed. Mr. Chairman, I believe that this House understands the concept of decentralization. When we talk about decentralization, we are decentralizing functions, we are decentralizing power, we are decentralizing responsibility. I just cannot imagine how you can decentralize these three (3) and then you fail to decentralize finances. Mr. Chairman, we have examples on ground. Some of us happen to be in this august House and at the same time on the executives of RC V and we know what has been going on. Mr. Chairman, since a certain percentage started being retained at sub-county levels, there is a very tremendous change. If you go throughout the whole country, in Kamuli for instance I will give you one example, Mr. Chairman, that we have even managed to put up a Hospital which we have been staggering with over the last 30 years. This is because some of this money is being left behind. Mr. Chairman, in principle I would like to agree with the mover but probably I would like to bring in a small amendment. If we find that 50 per cent is too big a figure, then we can lower it down to 30 per cent for the good of our people, Mr. Chairman. I strongly support the amendment.

MR. BAGENA ANTHONY (Bufumbira County East): Thank you, Mr. Chairman. The percentage of 30 that is being proposed is extremely attractive and anybody who really loves his, home area would want to support it. However, I would like to be realistic, if we pass 30 per cent and we do not decentralize 30 per cent of whatever functions the central government was doing, rather ineffectively, the chances are that, we shall keep more of those functions. Because we have gone through them and probably have no money to carry them out. I would want both the movers and the opposers to give us the equivalent of what is going to be centralized. And probably decentralize the funds that would go along with decentralized services then we would be in position to take a more realistic decision. Otherwise as of now saying decentralize 30 per cent of the funds and we are decentralizing the equivalent of services to the local area, we shall be cheating one side. Although we would like to favour the other one. So, Mr. Chairman, before we vote on that I would wish these people who have worked out the percentages to be retained or decentralised. Let us work out what is going to be the cost of services that will be decentralized and services that will still keep at the centre then we shall take a national decision, Mr, Chairman. *(Applause)*

MR. WAGIRA MOSES (Kibuku County): Thank you, Mr. Chairman. I want to begin my contribution to this amendment by saying that what we are planning to do today is a trend which took off long ago in the church. The church was the first to realize and even argue that for how long shall we continue praying under trees? While in a year we collect millions and deposit to the headquarters of the church, nothing returns to build the church. Mr. Chairman, we are here debating and this assembly has approved decentralization or devolution of powers to the grassroots. But I would like us here, Mr. Chairman, to remember the words of one prominent man called Amilcar Cabral, one of the architects of Guinea Bissau's Independence. He did say that democracy, National Revolution, one can add decentralization and devolution are those words devoid of meaning unless they can be translated into an improvement of people's welfare. Mr. Chairman, merely to write here in the constitution the word decentralization without translating it into an improvement of the welfare and conditions of our people, would in fact mean nothing. We are here, Mr. Chairman to settle and see that we lead this country of war. Mr. Chairman, we are here to settle problems that have been settled militarily and politically. One of the causes of wars in this country, Mr. Chairman, in my view, has been that people have been looking to Kampala as the only source of wealth. I have been looking at a way of realizing wealth as matching to Kampala. The more we decentralize power including economic power to the grassroot, the more we are getting medicine to the recurrent wars in this country. Mr. Chairman, this has been the cause of ambitions in this country. Mr. Chairman, I did argue here in one of my debates that two passions govern the acts of man in society. That is the greed for money and greed for power. Place this before the eyes of men then they will move the earth and heaven in order to realize that.

Mr. Chairman, I was eagerly waiting for the amendment of Brig. Moses Ali that the President of this country should in the future be getting a shilling for a salary. This was a very appealing amendment to me, Mr. Chairman that indeed this would curtail those who, looked at political power as the men enriching themselves. It has been argued and some are saying that by prescribing a percentage that should remain at the centre. We are incapacitating or paralysing the central government. Mr. Chairman, I look at a system of decentralized government where there is reciprocity on part of the central government and the local government. If the instance which one Honourable delegate gave that the country is at war and more resources are needed to finance the defence of the country, I see no reason why if really it is a justified war, local government can't contribute to this war, Mr. Chairman. We did argue and presented it at the very on set of our constitution that power to the people, and we all by very resounding yes and aye did say let power go to the people. Power cannot be qualified it is not only political power that should go to our people, economic power should as well move to our people. What is power without economic power? To send power to the people in words and leave economic power at the centre, is to hold the periphery at the ransom of a central government. In this connection, I beg to strongly support this amendment and say that much as I may not agree to 50 as the percentage, I am in for a sure deal where we should define what percentage of this National cake should go to the grassroots. Thank you, Mr. Chairman. *(Applause)*

THE CHAIRMAN: Honourable Ndege, Honourable Tirusasira suggested 30 percent, did you buy it or you did not buy it?

MR. NDEGE: I said 50 percent was a minimum but if most of the Delegates feel 30 percent be a minimum, we are not setting a fixed percentage, we are setting the minimum, but according to the 1962 Constitution they shared 50 percent. If you look at Article 9, 173, 50 percent of the money from revenue went to Buganda and 50 percent from the General Fund also went to Buganda. So 50 percent in 1962 was what was considered adequate according to that Constitution and - *(Interruption)*

THE CHAIRMAN: Which Article Honourable Ndege?

MR. NDEGE: Schedule 9 to the Constitution of Uganda, Section 107, page 173. So I think in 1962 Constitution what was good for Buganda can be good for Uganda. I think if we leave it overnight may be people can read it and get the gist of it. I also prescribe to the other one who said that let us look at the departments which have been transferred from the central to the local and I am sure it is more than 50 percent of the budget resources. So if we can all sit and look at it I am sure that we shall come out with a figure very near to what we have suggested.

THE CHAIRMAN: Honourable Ndege, I just wanted to know from you or to seek your agreement whether you are prepared to accept the Motion of 30 percent or you wanted to maintain 30 percent.

MR. NDEGE: If the worst comes to the worst, I would go for the 30 percent.

MR. NSUBUGA NSAMBU (Makindye West): Thank you very much, Mr. Chairman. Mine, Mr. Chairman was to draw your attention to the fact that if we are serious about the decentralisation, the decentralisation must come with money. I considered the services which have been transferred to Buganda Government at that time. They included hospitals, roads, post-primary education and technical schools and they were allowed to draw 50 percent of the product sold, connected with petroleum and also 50 percent statutory contribution from the General Revenue. They were also allowed to levy some taxes. So you find they could look after hospitals like Masaka, Entebbe Hospital, Bombo Hospital and post-primary secondary schools. This percentage of 50 percent to my mind if we are serious that we are decentralising is enough, adequate. The local governments will not be bothering the central government that the money was not enough. As the percentage is going to be included probably in the Schedule or somewhere, it can be varied as the necessity arises. But if at the moment what is being decentralised will just be finishing 50 percent, any other functions which will be decentralised will be decentralised together with the money which will be running such functions. At the moment I suggest and I strongly support it that 50 percent as suggested by Mr. Ndege is adequate.

THE CHAIRMAN: Honourable Delegates, we have debated this matter and although my attention was drawn to the quorum situation, I thought it was better we continue debating but we cannot vote on it because we are now 99 in the hall instead of 142. I think we can sleep over this, it is an important subject. This really is the crux of the matter. What do you do to the service and how do you ensure that taking one year and the next the services are increasing rather than decreasing? Therefore, the transfer of resources between the centre and the district both as a mechanism and as to volume becomes crucial. So may be we can continue briefly tomorrow and then we decide which way, which side we take or which formula we prescribe. With that I wish to adjourn the House until tommorow at 9.00 O'clock.

The Council rose and adjourned till Friday 7th April 1995 at 9.00 a.m.)



THE REPUBLIC OF UGANDA

PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

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FRIDAY, 7TH APRIL 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3897]

7th April, 1995

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

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

PRAYERS

(The Assembly was called to order)

COMMUNICATION FROM THE CHAIR

THE CHAIRMAN: Honourable Delegates, there is not much in form of communication except to remind you not to depart early because of the Chairman's party. Where we would like to get together all of us and wish each other a happy Easter. I think It will be today at 6.30 p.m. in the gardens of Nile Hotel. I trust the cards have been sent to you and you have received them. So I would like to remind you of this very important Easter occasion. *(Applause)* I think the House has not turned into a rally, has it?

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

CHAPTER 13 - LOCAL GOVERNMENT.

ARTICLE 214 - GRANTS AND OTHER FINANCIAL ASSISTANCE TO THE DISTRICTS

THE CHAIRMAN: Honourable Delegates, when we adjourned and I thought we would resume yesterday but as you know, I had a problem with the sound system. We were discussing a motion which had been moved by Honourable John Ndege, the effect of which if carried would have the effect of stipulating a minimum of 50 per cent of the government budget to be dedicated to the grants to district governments. As I did indicate, this is an important aspect in the process of decentralization and I thought that we should give it a bit more time before we come to a decision. Now the motion was still on the Floor. There was an attempt to reduce the figure from 50 to 30 but the mover was not very keen. Therefore we continue with debating on the basis of 50 per cent. Let me hear some more arguments, then we see what we do next.

MR. KIWANUKA MUSISI (Buikwe County South): Thank you Mr. Chairman. Mr. Chairman, I would like to support the principle of setting a minimum of government revenue to be set aside for local governments. And I will start by informing the House that contrary to the claims and fears expressed on the Floor of this House, that local governments are doing nothing other than squandering and embezzling public funds. The truth is that the best safeguard against misuse of public funds is the vigilance of the people. Therefore, the nearer to the people public funds are put, the more effective the control of the people will be. Mr. Chairman, it is in our national interest to put in the national constitution measures which will guarantee that at any given time levels of government nearest to the people are assured of appropriate shares of the national revenue for the provision of services and for development. With your indulgence Mr. Chairman, I would like to give Honourable Delegates one living example. It is not hypothetical, it existed in this country up to 1993/94 Financial Year and it relates to the Ministry of Health. In Mukono we have two hospitals which are run by the central government. These are Kayunga hospital and Kawolo Hospital. Up to June 1993, the position was such that anybody who went to these hospitals, to any of these hospitals would be welcomed by a terrible stench. The place was smelling in such a manner that was just intolerable. There was no paper in each of these hospitals on which prescriptions and diagnosis could be written by the doctors. The practice was such that on introduction of a patient in the out-patients department, the first thing that would be demanded for from you would be paper. You have brought a patient, where is the paper where we shall write? Mr. Chairman, there was no water. Even after buying the paper and all that and after diagnosis and prescription, these hospitals did not have drugs even for aspirin or the simplest drugs. Patients would be requested to go and buy them from outside the hospital. This was happening while at the same time there used to be releases of drugs from the central pharmacy Entebbe. A truck would come, off load drugs in the hospital stores and immediately these drugs would be diverted and shared among the medical people. Mr. Chairman, anybody who visited our hospitals would discover that at night. You would not find a bulb anywhere. There was no food for patients, no bedding, name it. Everything was missing. Whenever we tried Mr.

Chairman, in my other capacity as a district leader, to intervene, the answer we were given was, there was no money provided by the Ministry of Health except a monthly imprest of 100,000/-. Any appeal to the Ministry of Health could not help. Mr. Chairman, when decentralization came in 1993/94 and funds were sent to the hospitals through the districts, we discovered that instead of 100,000/- each hospital was being assigned 68 million shillings per month, 68 million shillings from 100,000/= per month. Now, Mr. Chairman, when you go to these hospitals, because the people are in charge, the story has changed. I am not claiming that we have 100 per cent improvement but the situation has changed. The hospitals are cleaned, the drugs are there, the food is there and quality food moreover. So I am saying Mr. Chairman, we must make an attempt to make sure that at any given time, our local governments must have an assured amount of money from the centre. The national deterioration and absence of infrastructure in the country between the mid-sixties and mid-eighties is generally attributed to mismanagement and the wars.But I would like to add Mr. Chairman, that this has been partly due to over centralisation of power especially financial control of public funds. People in rural areas simply looked on as their formerly well looked after infrastructure of schools, of dispensaries, of administrative units and so on, went to the dogs. They could not help and always the explanation would be there is no money. Since there was no legal provision to compel government to give local governments any minimum, even in times of boom, central government would spend on its priorities which were not necessarily priorities of the people. But worse still, even in times of difficulty, the first votes to suffer are those of local governments. Should there be a problem with national budget and with the cash inflow, the first person to suffer is always the local government. It is therefore very important for us to protect these local governments. Mr. Chairman, under the present decentralization Statute, districts are compelled to set aside 50 per cent for the sub-counties and even-sub-counties are compelled by law to leave ten percent for the county councils, that is RC 4s. They are compelled to leave 25 per cent to the village councils and of course with meager resources. This has been a problem to each of these levels of government because it is difficult for them to make both ends meet. But I want to submit that it is a better arrangement because at its level, one knows what share one he is entitled to. I will say without shame Mr. Chairman, that before the introduction of this law, since I am in charge of a district, whenever we had problems we would also have to consider our district vote first.The lower level local governments would suffer. But now that we are compelled by law, whatever we have, we share according to the law. Therefore Mr. Chairman, I would like to strongly support the provision setting aside a percentage for local governments. However, I would like to add that as we start setting a percentage of 50 per cent, in my own opinion and in the absence of a study is rather only our side. To me, it suffices to set a minimum. For this matter I would go with a proposal for 30 per cent as a minimum. We make a start from there. I would like to appeal to Honourable Members, when we come to the subsequent article regarding the local government finance commission to support it very strongly.Because when we set the minimum, it means that negotiations for funds will be an ongoing process year after year. The machinery to do this together with the central government will be the local government finance commission. Mr. Chairman, I beg to support the principle. Thank you.

MR. BIDANDI SSALI (Nakawa Division): Mr. Chairman Sir, I do not think in my own assessment that any Honourable Member in this House is opposed to the principle of guaranteeing an amount that must always be transferred to the local governments. Now the point at issue I think is what percentage. That is the point at issue. Nobody is saying there should not be guarantees otherwise what is the use of all of us having declared that we must decentralise? What I would like to express my opinion about Mr. Chairman, is that we should avoid, especially in constitution-making, to be moved by sentiments. Because when you ask me to vote for 50 or 30, I will have no grounds other than my personal whims. Yet we are talking about a matter that should be subject to guidance, actual guidance, scientific guidance. Mr. Chairman, I know some constitutions which have put this sort of provision. Others have even gone as far as putting a formula which formula was based on facts that had been presented and technically worked out. My own view Mr. Chairman is, we know the services we have decentralised by virtue of the fact that we have itemized what should remain at the centre. Mr. Chairman, we know that the government has been handling or providing these services directly from the centre. All budgets contain this

amount of money which the central government has been using or claiming to be using. I would propose Mr. Chairman that if you took for example, the last three years, which years I am taking on because this is where there has been a consistent control of inflation. It has tended to be stable. Now if you consider these three years,and we found out how much has been spent every year on the services we are now decentralising, get an average of it. In period so much spent on Local Government, this amount in agriculture, in health, in community whatever in my local government, in education and so on. This amount of money is quite an appreciable amount of money. In fact when Honourable chairman Mukono District is talking of this change, it is not change of increase of provision. It is a change of directly what has been every year provided for these services through the right channels. Therefore, if we took this as a base, we say that the first principle of protection is that from now on, any transfer, unconditional transfer from the central government to the local government must not in any way be below what has been or what was provided the previous year. Now that is the first principle of protecting or guaranteeing the continued provision of services by the local governments. At least at the level that they did last year, instead of saying that the government says we have less money now, therefore, you close some of the health centres and others. So that is a constitutional guarantee which is provided in most of decentralised constitutions. So Mr. Chairman, I would like to propose and I implore the Honourable Members to think about this proposal. Just like we did yesterday to set up a special committee, well, some of our people may not be learned in Honourable Karuhanga's and Honourable Mulenga's family but we have statisticians here. We have economists here, we have people who have been involved in this sort of thing, in the Ministry of Finance. If we get a committee of about four, five people, we give them a few days, they can establish along these lines, how much.It is possible that what has been provided in these budgets on the average every year is actually 50, 40, 60 or whatever the case may be. Which means that if it has been the present government for example, has been consistent for the last three, four years to make sure that this is provided for. There is no reason why the next government should say no, that was too much or we reduce it. I think they should be able to come up with a proposal either in form of a construction of constitutional guarantees or a percentage at least based on scientific consideration of facts as a base. So I would like to propose Mr. Chairman, that we set up a committee and it advises us in the shortest possible time maybe next week. I beg to move Mr. Chairman.

THE CHAIRMAN: Well, that is a proposition from Honourable Bidandi Ssali. I do not think we have to make it a form of a motion.If the Member who moved the other one is prepared to accept that, then we would proceed without having to go through the processes of voting on this. But what he is saying is, maybe that can be left to the committee if we so agree to set up. I understood Honourable Bidandi Ssali to say that we go backward three years. We establish a base figure for each district, for each transferred activity or for the totality of all the transferred activities. Then that totality can be expressed as a minimum percentage of unconditional transfer within the constitutional provisions.But the committee can even work at a level where they say they can work out or they can set up a formula, you can first establish a base figure based on three years. Then you say, that is a minimum activity figure for each activity. Then you adjust that one for various factors, inflation, improvement in services and so on. One year to the next at the time of calculating each unconditional grant so that formula is expressed to be in the constitution as a basis for calculating a minimum unconditional transfer. It becomes a formula for future. That way you are more scientific than just arriving at a figure of 30 per cent because really what have we based it on? Maybe Honourable Kiyonga can comment on that since he is well associated with these matters.

DR. KIYONGA CRISPUS (Bukonzo County West): Thank you very much Mr. Chairman. Sir before I would specifically respond to the question you have posed, I wanted to throw a little more light on this subject on the Floor for purpose of clarification. I agree in general Mr. Chairman and Honourable Delegates that this transfer of resources from the centre to the periphery is a necessary process, in our decentralization and is likely to lead to better services to the *wananchi.* We should not lose sight of what resources we are talking about and also the implications of us continuing to operate as a whole body, as a whole country. So besides the revenue which Honourable Ndege is talking about, we also need to realise that there are grants and loans from outside the country which are also resources meant for the population. So I find a shortage in Honour-

able Ndege's formulation when he is addressing the issue of the internal revenues. Secondly Sir, as we know, the central government is going to have no territory of its own where it will spend any residue money apart from overheads like expenditure on its officers. Otherwise, all the money expended will have to go in one district or the other. So there is no money to remain at the centre apart from the money for overheads and joint services like the Army, the Police. And the whole objective of us remaining as one country is that at some stage, we have to share. We have to act like an insurance arrangement where one year, a big project maybe will be carried out in Karamoja. It may be constructing a tarmac road and for that year, we may require a good portion of our national resources to go to Karamoja. Depending on how much we have got from outside, we may have to spend a fairly big fraction of our own internal revenue to ensure that the project in Karamoja succeeds. So taking all those into account Mr. Chairman, I find a bit of difficulty in the proposal by Honourable Ndege. First of all, it leaves out other resources, loans and grants. Secondly, it does not take into account that we shall still have to act as one country. We have a project in one part of the country, we are committed to it. We have to do it over a certain period of time and during that time some parts of the country may have to wait in terms of how much they are getting at that point. And what the committee said before was sufficient guidance. The committee said Parliament should at some stage come out with a formula on how the districts are going to share resources that will be available. To me, that is where the crux of the matter is. Once the loans,the grants and the revenue is available, how are they going to be shared by the districts? Because the central government has no territory in which it is going to apply resources apart from overheads. The balance of the money must go to the districts and the question is, how will the districts share? Will they share equally? Will they share according to population? Will they share according to needs? And if we are to set up a committee Mr. Chairman, I thought that is where we need to put more emphasis rather than just the internal revenues. That is all Mr. Chairman I would like to say.

MR. MANUEL PINTO (Kakuuto County): Thank you very much Mr. Chairman. Mr. Chairman, I think the input by Honourable Dr. Kiyonga is very welcome. We should approach this matter scientifically. But the principle must remain that the central government ought to determine or we must constitutionalise a target where the central government should set aside a certain percentage that goes to districts. Now it is very important for this to be done Mr. Chairman. I will give you an example. Right now as we speak, developing countries have been in cry against the developed countries in the form of grants and loans that they send to us. This is because developing countries do not have much determination to decide what they want and have money for it. Many times, it has been the World Bank and the other UN or bilateral agencies that decide what is best suited for these countries and they will send these loans and grants. Similarly the districts are now going to suffer because it will be the central government which is going to want to know what is best suited for these districts and therefore apportion these finances accordingly. Now you can see why the developing countries and Uganda being one of them, clamour to decide and be able to get money according to their priorities from the developing world. When it comes to the situation that they are going to get from the centre, to the districts, the same principle should apply. I see need for this kind of approach Mr. Chairman. What are we decentralising? We are decentralising services. Mr. Chairman, not too long ago, the UN Secretary General wrote to the Commonwealth countries and set aside what they call the agenda for development. In the agenda for development, the main priority was set towards combating poverty and if you look at poverty, it is a very wide term. We are talking about services that may be rendered to district level that are going to alleviate poverty, that are going to reach the poor. We are talking about health services, we are talking about education, we are talking about water. We are talking about roads, we are talking about all these other priorities in which the districts will determine for themselves. The UN Development Program Mr. Chairman, has brought forward, together with UNICEF a principle that each developing country should devote 20 per cent of its national budget towards human development. Accordingly the UN system, the UNDP and UNICEF will match this 20 per cent and the idea will be to try to ameliorate these difficulties. I therefore envisage need,if this principle is also accepted world-wide, for a compulsory percentage towards human development. In Uganda we are decentralising and I see a lot of value in the argument that the percentage should be set aside which the central government is going to work towards. Mr. Chairman, I have no objection

to committees being set to streamline this and have it set in an understandable language but that it should be constitutionalised. Mr. Chairman, without much further ado, I support the principle of setting a percentage towards which the central government will be obliged to work and set this money towards the districts so that people can receive better services. Thank you Mr. Chairman.

MAJ. TUMUKUNDE HENRY (Rubabo County): Mr. Chairman, my biggest quarrel with this amendment is that it may affect some of our areas which are least developed. For example, if we fix a standard amount or percentage which should go to the districts it means we will have already done the allocation here. It shall be automatic every year until maybe the end of time. So Mr. Chairman, for some of us who come from least developed areas, we fear this amendment. It erases out any chances of us complaining to the centre and convincing the centre that we need more attention on the financial resources than maybe some other areas in Uganda. If I was to use an example of Mbarara and Rukungiri. Mr. Chairman, if we set a percentage, it means Mbarara will always get its own percentage and Rukungiri the same. Yet Mr. chairman, some of us believe even this constitution should bring it out that Mbarara should get lesser than Rukungiri because Rukungiri needs more to develop the area and bring it to the level of Mbarara. So in this regard Mr. Chairman, I will not find it safe to commit myself to supporting this amendment of fixing percentages that will go automatically to the districts Mr. Chairman.

THE CHAIRMAN: Honourable Tumukunde, of course the motion of Honourable Ndege creates a problem. He is saying that he wants to support one amended, by deleting two. But if two were to be retained, it is talking about not only the aggregate of the block grants which maybe I understand to mean unconditional grants but also equalisation grants. My understanding was that you have a taxation regime which is in the hands of Honourable Owori and his team, that they will come back and say districts can have powers of taxation in the following areas. So you take the district like Kasese, it can impose tax on a number of things like coffee. It can impose royalties maybe when copper is being taken out eventually and collect other taxes. Then you may find that another district is not endowed with taxable items in nature of royalties. Therefore it will be disadvantaged in terms of revenue collected. So the centre has to apply a formula to put in more money so that equalisation grant keeps a national level of services at the same level and the improvement of them. That is how I understood it. You first of all tax, then the grant is given to you towards your budget and still there will be a shortfall in some of the districts. The central government therefore, must come in with grants called equalisation grants to be able to maintain the standard of services and the increase and quality are consistent throughout the whole country. That is how I understood if you read one and two together. But of course I was going to appeal to Honourable Ndege to indicate to us now whether he buys the proposal of the committee so that we do not have to waste anymore time debating this or not.

MR. NDEGE: Thank you Mr. Chairman. I think for the good of all of us and this country, we should accept a committee to get our choice. But I would like to disagree with 217. It is talking about block and equalisation grants. So it is already catered for.

THE CHAIRMAN: But your motion was to delete two.

MR. NDEGE: Even in 217, it is there Sir. It is block and equalisation grant. So I accept the proposal.

THE CHAIRMAN: With that, I think what we should do is to concern ourselves with putting together a team of people so that we stand over 217 until we have got a formula or some kind of recommendation embodying the sentiments expressed. I think what is agreed is that there must be protection of districts against central government in relation to what will be minimum requirements to keep services that have been transferred. So that you do not transfer services without resources or you do not transfer services with resources, then withdraw resources and leave services there.

MR. BIDANDI SSALI: Mr. Chairman, I have a proposal. First of all, the mover himself is a member -*(Interjection)*, no, him, Honourable Ndege. Probably Dr. Kaberuka who is a specialist in that line and Honourable Musumba who has been involved in the annual calculations of this and so on. For the time being, those are my proposals probably to be chaired by Dr. Kaberuka but these are my proposals.

THE CHAIRMAN: How many do we need?

HONOURABLE DELEGATES: Five.

THE CHAIRMAN: Five, so Dr. Kaberuka you have volunteered to chair this committee and the people have a lot of confidence. Then it is suggested that Honourable Ndege, Honourable Musumba -

MR. DICK NYAI (Ayivu County): Thank you Mr. Chairman. Whereas I would like to recognize that Honourable Bidandi Ssali is going by experience and so on. I would like to plead with you Mr. Chairman that committee should include somebody from one of the particularly marginalised districts. Because if you are going to talk about equalisation funds, then the person who is going to plead for that equalisation must know where hinges are, particularly from Arua District.

MR. TIBERIO ATWOMA (Chua County): Thank you Mr. Chairman. I am only proposing a name and that is the Honourable Okullo Epak.

THE CHAIRMAN: Yes, Dr. Okullo Epak, was he not on the other committee? Okay, is that agreed? Those are already four. But now we need a marginalised person. Let us hear from the most neutral person, Father Gaitano.

REV. FR. TIBANYENDE GAITANO (Presidential Nominee): Mr. Chairman, I think Dr. Okullo Epak comes from one of the marginalised areas. I would propose that we have Honourable Bidandi Ssali on this committee.

THE CHAIRMAN: They do not trust his other job.

MR. OBIGA KANIA (Terego County): Thank you Mr. Chairman. I would like to propose, Dick Nyai, not only because he comes from a marginalised district and a region but he will be able to represent so many districts. Also he had experience in this local government affairs as an RC chairman.

THE CHAIRMAN: And I think that is enough. I do not think really we have to argue about that. So far the names we have, unless you want us to vote. The names we have are Dr. Kaberuka - chairman, Honourable Ndege, Honourable Musumba, Honourable Okullo Epak and Honourable Dick Nyai. *(Interruptions)* Okay, I think let me put the question because otherwise if we argue about names, unless we have a committee of ten -*(Interruptions)*.

MR. SAM KUTESA (Mawogola County): Mr. Chairman, I think even if we have to increase this committee by one person, I would like to suggest Honourable Kiyonga for his experience at national level. How he expressed it today and also as a man who comes from an emerging marginalised district. I think Kasese has emerged but it not marginalised but Kiyonga can bring about his experience to bear. I propose his name.

THE CHAIRMAN: The problem we have. I thought it was going to be the gender question.

MR. OCHYENGH DAN (Kapelebyong County): Thank you Mr. Chairman. I have listened to the names. I did not copy them down. I do not know, I think we seem to have left eastern basically and all north-eastern.

THE CHAIRMAN: I can tell you that if we took the four major regions, the only region which would complain would be Buganda because we have got Kaberuka - West, Musumba - Eastern, Ndege - Eastern, Okullo Epak- Northern and Dick Nyai - North-western and so -

MR. OCHYENGH: Mr. Chairman, I think one of the areas which is troubled most is possibly north-eastern. I would beg your indulgence that we include one person from north-eastern to cater for Karamoja and Soroti. And I would propose Honourable Malinga Mr. Chairman.

THE CHAIRMAN: Okay, it is a very popular committee I can see.

MR. NGOBI MATHIAS (Presidential Nominee): Thank you very much Mr. Chairman. It is my opinion that the committee as read out by you should be sufficient and the usual thing is that the other parties that may be interested can go to this committee. The committee will also have powers to co-opt anybody else they think that could be. But it is impossible to satisfy that everyone or most people will be on this committee. It is not like one of the Select Committees. As it is now, I would persuade Members to accept that we have this committee and if necessary Mr. Chairman, you put the question.

MR. MASALU MUSENE (Manjia County): Thank you very much Mr. Chairman. I think I will be as a neutral person in my other capacity. I would like Mr. Chairman, for purposes of gender balance to propose Mrs. Rhoda Kalema. Not only to balance the gender but also as coming from one of the smaller districts of Kiboga. So I propose Mrs. Rhoda Kalema.

THE CHAIRMAN: That would mean that we have a committee of six instead of five. Let me hear Honourable Atwoki.

MR. ATWOKI AMBROSE (Youth-Northern): Thank you Mr. Chairman. Mr. Chairman, I believe that the House has left one important person who should have been included on this committee, a certified accountant with vast experience in the names of Wanendeya. *(Laughter)*

THE CHAIRMAN: We have got a number of them here actually if we were to follow that because we have Honourable Zziwa George here.

DR. NAKYANZI VERONICA (Ntenjeru South): Thank you Mr. Chairman. Mr. Chairman, looking at the committee and its terms of reference and concerns and in the interest of gender balance and special problems associated with marginalised districts, I would like to propose Honourable Nsangi to be a Member of the committee. She is conversant with travelling over the lake. She comes from a marginalised district and she is a woman and from the central region. Thank you Mr. Chairman.

THE CHAIRMAN: Now we have two names of ladies on the Floor.

MR. WANENDEYA WILLIAM (Budadiri East): Thank you very much Mr. Chairman. Mr. Chairman, I am glad that Honourable Kaberuka is on the committee, Honourable Dick Nyai is on the committee and I would request that Delegates think of somebody from marginalised districts. Just a moment, what I am thinking of Mr. Chairman is that Mbale and Masaka contribute a lot and also Busoga is already catered for. But Mr. Chairman, take for instance Mbale. We pay some 30 million dollars on the average to the budget of Uganda. But if you look at the 1994/95 estimates, we are down for nearly a quarter,(0.4) of a billion. Masaka and Mbarara also contribute quite a lot to the national budget. Therefore, those districts which are in a way marginalised and yet contribute a lot. They should really send in representatives to that committee and to be there as a matter of a must. I request Delegates to think about that and possibly the districts themselves as we did on one of the committees. They should be able to get somebody to represent them. I thank you Mr. Chairman.

MR. ELYAU MIKE (Kalaki County): Thank you Mr. Chairman. Mr. Chairman, I do not see why we need a lot of people. I think you would take up the first five of the least. This would be enough. Actually we are trying to bring some intrigue here for nothing. This is a matter of study. It is subject to report here. So number one and two up to five would be taken as a committee.

THE CHAIRMAN: Okay, let us agree this way, this is really a committee to come back with a recommendation as to a formula. It is not going to be distributing money. This one is going to talk about a formula. I would like to implore Members that we take these five and they come back with a report. Honourable Kaberuka, Honourable Musumba, Honourable Ndege, Honourable Okullo Epak and Honourable Dick Nyai. Thank you. So 217, we stand over the entire article and maybe the committee could be asked to come back as quickly as possible with their recommendation and this appeal extends also to the Honourable Owor Committee.

MR. CHARLES OWOR (Aswa County): Mr. Chairman, the committee has actually finished its work and it is part of the documents that have been circulated this morning. It is therefore ready to present its views. I only wish to say that because I have to attend a meeting for the legal and drafting committee, Dr. Okullo Epak is ready to present that.

THE CHAIRMAN: Could I have benefit of your report so that we can in fact now go back to that? Honourable Owor is saying that his committee's report was circulated.

MR. OWOR: Yes, from page two

THE CHAIRMAN: It has not been brought to my attention.

AN HONOURABLE DELEGATE: He is coming to deliver in style.

MR. KATENTA APUULI (Conservative Party): Mr. Chairman, I thank you. I would like to inform Honourable Delegates that this report is at the back of another report entitled minority report proposed amendment on Article 223. If you look at the next page, you will find it there.

THE CHAIRMAN: Yes, are you suggesting that having stood over 217, we go back to 215 so that we receive the report of that Committee?

MR. OWOR: Mr. Chairman, the committee considered the matter that was referred to it. Maybe to remind Members, this was in respect to Article 215 where there was a disagreement as to the kind of taxes that should be allowed to be collected or levied and appropriated by local government. The proposal by Committee Four was raising a lot of confusion and our committee was therefore asked to streamline and re-formulate this article. What the committee considered was that there was need to clearly understand the difference between what would be major taxes. The taxes which the central government has always been levying which now we want to entrench within the local government unit. Also to distinguish that from purely administrative fees which also now we want to be collected and appropriated at the local government level. The committee therefore decided to re-arrange the whole of this article and break up into more clauses than it currently had in the committee four report. One of the other things that the committee considered was the issue of power of the local government to levy taxes. The word 'levying of taxes' was considered to be legislative in effect. In order to levy, you need an authority and we discovered that Article 178 stated clearly that no person can impose any tax. In other words, no person can levy any tax unless there is an Act of Parliament that is allowing it. Therefore, if we went ahead and stated that local governments have power to levy taxes and yet on the one hand we are saying that it will be done in accordance with Article 178 which forbids any person from imposing tax unless an Act of Parliament stated. We thought in effect what this is saying is that the local governments only have power to charge taxes which have already been imposed or which have already been levied, to charge it and collect it and retain it or appropriate it at that local government level. We decided as Delegates can see in Clause one of our proposed formulation, we have substituted the word 'levy' with the word 'charge.' The formulation therefore reads: *"Local governments shall have power to charge, collect and appropriate fees and taxes."* Now we are talking about fees and taxes for the reasons that are stated earlier that we want to distinguish two items or two sources of income to the local governments. The normal routine taxes which are already being levied and collected now and those which are of the administrative nature. We decided to use the general word 'fees' which would cover licenses, it would cover payments for services that the local governments would be rendering. In Clause two, we proceeded to say: *"The fees and taxes to be charged, collected and appropriated under Clause one of this article shall consist of;"* we did this because of the feeling that many Delegates had that we had to be definite about the taxes. Taxes that are currently being levied, collected and appropriated by the Central Government which we now want to be collected and appropriated at the Local Government level. That is had to be definite. So that at the end of the day, the Local Government knows that the following taxes which are collected and which we used to send to the Central Government revenue is now to be used locally. We therefore, used the word 'consist of' then 'rates, loyalties, stamp duties.' We changed the word 'personal tax' to 'personal graduated tax,' because the general feeling among members was that Local Government will not tax income, but rather just the graduated tax. We included fee on registration and licensing and because we felt that we cannot exhaust all the taxes or we cannot project our minds to all the possible taxes that could be imposed later on. We included this provision that they will also have power to charge, collect and appropriate any other fees or taxes that Parliament prescribes. In future if another aspect of taxation arises that we want to decentralise or we want to put in the hands of Local Government, Parliament can go ahead and prescribe that. In Clause 3, we have retained the proposal by Committee 4, where it provides that the Local Government may make laws for the effective implementation of this Article, but any such law shall be in conformity with the provision of Article 178 of this Constitution. Which is to say that should Parliament make any law regulating the manner in which taxes should be collected, Local Government cannot make laws contrary to that. We also had Clause 4, which is also along the line proposed by committee 4. No appropriation of funds by Local Government shall be made and left approved in a Budget by its Council. It had been decided earlier that Clause 4 in the

proposal of committee 4, is to be deleted. Clause 4 in that proposal says: *"Parliament shall by law make provisions for first appeals in relation to taxes to which this Article applies,"* because we thought Article 178 of the Constitution takes care of that. There was a suggestion in the committee that a provision should be formulated to cater for situation where the Budget has not yet been made. This has been due to unavoidable circumstances. The Chairman of that Council could be allowed to withdraw money from the Council money for the purpose of meeting necessary expenditure for a limited period. Now, this was suggested to be in line with what we provided in respect of the national Parliament, where the President can authorise the withdrawal of money if the Appropriation Bill has not been approved. But later on when we consulted with the Chairman of Committee 4, he said they had earlier considered that. The majority view was that the Chairman of Committee of the Councils, could misuse this. We could not therefore authorise them to allow money to be withdrawn before approval of Budget. In any case, the argument was also that, the approval of Budget is such a central aspect of the activities of the Council that they should really find time to discuss it and approve it in time. This is also different from the case of Parliament where a lot of time is wasted in general debates, prior to debating the Appropriation Bill. Therefore, we do not see that there could be circumstances where these people will be in a fix and cannot find money. It was argued that there is a way in which the Central Government can still step in if there is such a crisis that the Council could not approve its Budget and yet has to continue running its business. Mr. Chairman, there was a minority view regarding this. One of the members thought that in his view, this tax on commodities could create a distortion in the commodity market in the country. He also felt that it has the effect of enriching some areas to the disadvantage of others. In other words, areas which produce coffee like Mbale, could be enriched, when those which are equally working hard growing cotton disadvantaged, He also felt that in the long run, even those who feel they are advantaged by this tax, could eventually begin to suffer when commodity buyers would rather go where, it is not being levied. He thought that once there are satisfactory methods of sharing revenue at the centre. The need for revenue accruing from this would become unnecessary, but this was a minority position. The rest of the members felt that this should be included among the taxes to be entrenched. Mr. Chairman, this was the formulation of the committee. I beg to move.

THE CHAIRMAN: Thank you Honourable Charles Owor and members of your committee for having so expeditiously tackled your task entrusted to you and come back to report. I was going to seek some clarification from you with regard to the provision of Clause 2, relating to the fees on registration and licensing. Is it to be of general application? Because for instance the Uganda Investment Authority charges a Licensing fee. Would those fees that now available to, Uganda Investment Authority, Uganda Cotton Development Organisation, UCDA, be now transferred as the Register or license various coffee or cotton investors, be part of this?

MR. OWOR CHARLES: Mr. Chairman, I would like first of all to say all this, is subject to Clause 3, where the collection of this fees on registration and licensing is subject to any law that Parliament could pass. In the absence of any law prohibiting the Local Government units to charge, collect and appropriate, this fees on licensing, it would therefore mean that they are free to use that within the Local Government. But if Parliament goes ahead and says, fees on the licensing for this particular activity, should not be retained at the Local Government level, then it would mean, it would distinguish that from the rest. Otherwise, it is of general application that subject to any other provision.

THE CHAIRMAN: Yes, Honourable Abaliwano, he is the Chairman of the Investment Authority.

MR. ABALIWANO ALBERT BREWER (Bugabula South): Point of information. I would like just to inform the member that, currently the Uganda Investment Authority does not charge any fee for registering any Investment in this country. However, the law does not prevent us from doing so. But I would like Mr. Chairman, it is for the members, to be clear about this. In that, even if such fees were to be charged, this does not give a person, or does not actually prevent the person or any authority to charge the Operation Fees for that particular organisation to be able to operate within the area in which he operates. It is important that for us, we would probably charge a fee for the administrative work that we would carry out for that investor although currently we do not. However, once he sets up in Kampala or in Bundibugyo, then

the Bundibugyo Authorities have got a right to charge for the license to enable this particular investor operate. So, I do not think it will in any way be able to conflict with the current taxes at all.

MR. KAGIMU KIWANUKA (Bukomansimbi County): Point of clarification. Thank you Mr. Chairman. I am seeking clarification from the Chairman of the Committee Honourable Charles Owor. In Clause 2, I am uncomfortable with the word 'shall,' I would rather that we substitute with the word 'may' because if you leave it at 'shall,' that means you are in a way making it compulsory. Therefore, the areas where some of these taxes and fees were not, it seems they will have to be imposed. Because one may get a Constitution and say, what we have to charge shall consist of this. Mr. Chairman, in view of Honourable Ndege's Motion, whereby we are trying to give more money to the districts. Some districts at least, may find that some of these fees and taxes cannot wait, that they may not be implemented immediately. Because our experience, Mr. Chairman, like I was saying last time, many taxes were imposed in our district. I gave the example of the taxis and the bicycles, matooke. In a way the situation almost caused some confusion and wherever we passed in my Constituency, people are lamenting that these taxes have been imposed. This was because of mainly the districts that were given powers of decentralization, but without adequate funds and that is the argument of the district Administration. But then, since we are trying to cater for more money for these districts, I would think that some of the districts may find it not necessary to impose at least immediately. So, I would ask the Chairman to allow me to move that we change this word 'shall' so that it may read: *'Fees and taxes to be charged, collected and appropriated under Clause 1, of this Article may consist of,'* so that districts which find that they have to levy again then they implement it immediately. Those which feel that they are not going to kind of press their subjects too much immediately, then they can wait.

THE CHAIRMAN: Let us hear the Honourable Owor's response to that, it is in a way an interpretation of when is 'shall' read as 'may' and when is 'may' read as 'shall?'

MR. OWOR: Mr. Chairman, this provision, first of all, is in line with what I thought was aspiration of the majority, that there should be taxes that must go to the Local Government Unit. This is to distinguish between taxes that Government may allow them to charge and those which they may not. So, the 'shall,' should be read as saying nobody has authority to say, districts shall no longer charge on some duty. So, it is an obligation on the Central Government, an obligation of any authority, that districts must be allowed to charge this. You rightly pointed out that in legislative interpretation, there are occasions where the word 'shall' could mean 'may.' If you are empowered to do it, then it is not necessary to say, you are under obligation to do it. It only says, you have the authority, to do it. In this respect, if for example, there are no activities upon which this could be charged correctly. Then you cannot say because you are under obligation, you should correct it. It all depends on the presence of activity that would accrue into the charging and collecting of these taxes. The other issue is that, when we talk about the different districts, you will find that each of them will have to operate according to what law has been in place by Parliament. Parliament will say, okay, you are going to collect, and if you must collect rent, it must be according to this provision. It therefore would require that Parliament should make laws in accordance with this provision. In other words, they cannot decide to say, we are going to make a law that will stop district A or the following districts from collecting rent or collecting of royalty. It means all these laws must consider this provision that there is an obligation on whoever is concerned to authorise the collection of rent and rates and royalties and all this.

THE CHAIRMAN: I do not think you would like to push that case Honourable Kajubi. All that he is saying is, these shall be available at all times to the districts concerned, subject to authorisation by Parliamentary Statute if the districts so wish. If the activity does exist as it was explained, you cannot say, I will collect sales when you are not having crops that are taxable.

MR. GEORGE ZZIWA (Kawempe North): Thank you very much Mr. Chairman. I need two clarifications Mr. Chairman. The first one is the word 'permit,' whether fees would embrace the word 'permit' and the second one is, 'penalties.' I know 3 provides for Local Governments to make laws for the effective implementation. But I wonder whether penalties will be covered by this kind of law, because definitely it could be a disguise to hike fees, to hike licenses. I just want to get

clarification on those permits and then penalties in case there is failure by somebody to pay. Thank you very much, Mr. Chairman.

MR. MULENGA JOSEPH (Democratic Party): Thank you very much Mr. Chairman. The point I wanted to raise is also on Clause 2, and starts with the word that has been queried shall, 'shall consist of.' I understand it to mean this is the list of items or taxes that Local Government may charge and no more. Is that what was intended is that it will only be on rent, rates, loyalties, some duties, graduated taxes, fees and registration of licenses. Were we not saying this is the minimum rather than maximum? Therefore my expression shall include not be more appropriate because shall consist of would make the clause least.

THE CHAIRMAN: Okay, he will answer, Honourable Ongaria.

MR. ONGARIA STEVEN (Tororo Municipality): Thank you Mr. Chairman. About two or three years back, there were widespread taxes on market commodities like food stuffs being charged by various districts in this country. Upon which the Minister of Finance, reacted by abolishing them, instructing the districts to abolish the charges which they were putting on the commodities, especially from markets. Now, I want to request the Chairman of this Committee to clarify whether or why he thinks it says that the charges who should be included in these taxes we put in the Local government. Because these taxes on commodity food stuffs, caused a lot of widespread cries from people especially as they affect the ordinary people in the villages who are after getting some little funds to help them for the day to day life. May be cancelling it from this rate that he has put down for the Local Government.

THE CHAIRMAN: Could I ask Honourable Ngobi to tell us in his time how sales tax was being imposed and collected. He is the only reference point we have here on that issue. Honourable Ngobi.

MR. NGOBI: Thank you Mr. Chairman. Here, I will be excused by Honourable Members that I have to depend on my memory, but what we were doing is this. We were charging the sales from the centre and not from the district. Now, this was used for two purposes only. One was to assist the Local Government from where they put the agricultural products came and also to develop. The other purpose was to try and develop the two organizations, mainly Lint Marketing and Coffee Marketing Board but the charge was being made at the centre by the various organizations. That is to say the Lint Marketing Board and the Coffee Marketing Board and the appropriate amount after being ascertained, what it is, was passed on to the various districts. The sales tax was not being charged by the District. The Honourable Member, the sort of taxes that he is talking about are not sales, these are different taxes. That is what we were using the sales for, may be I can take this opportunity to inform Honourable Members that this amount was used very well. Because one, it is from that amount that I was able to put up what is today called Farmers House. From that amount, I was able to put up what is today at Bugolobi the Coffee Processing Plant and that did not cause any strain, the district Councils used this amount for development in Health and education and that was that. But sad is the day when the Central Government just took over that money, what was left after 1966 and started using it for his own purposes, but that is how sales was being charges and collected and distributed. Thank you very much.

THE CHAIRMAN: So, in view of that information, is there going to be because I think what Honourable Ongaria is fearing, is distortion of internal market by road blocks. So that, instead of Uganda being a common market, you would find that at a certain point between Mbale and Tororo, there were road blocks for collecting of some dues, both at the border of Mbale and Tororo. Then at the border between Tororo and Tororo Municipality, So that the whole road was littered with nothing but road blocks. Now, how do you interpret sales under this arrangement? Do you think you are inviting districts to begin erecting road blocks between themselves and other districts for purposes of collecting sales? Honourable Elyau, you seem to be knowledgeable.

MR. ELYAU MIKE (Kalaki County): Thank you Mr. Chairman. Let me help the members to know that the tax is not collected from the road side. It is collected from the factory where you are invoicing a particular Invoice, either against the Coffee Marketing Board or Lint Marketing Board. It is not done on the road it is just done in the cotton gin. You value the Lint cotton, the sales either in

Central percentage, put in the same Invoice, it is collected from the centre. So, the Local Government cannot have access to collect the sales, they will just make a mess. What Honourable Ongaria is raising is the Local charges, loading fees by Local Government when they are waiting from either the market place or lorries which are loading the food. This is a different matter. But the sales is a matter for Central Government. It is very complicated but if you bring it down to Local Government, there will be a lot of chaos. So, it is the sales which is assessed, nationally, put through the Invoices, to the Lint Marketing Board and deducted from there. This is how the sales was operating when I was in the Lint Marketing Board, it is not an easy exercise if you put it to Local Government. Thank you.

MR. NDEGE: Thank you, Sir. Sales, as I said, was on export related items like coffee and cotton where Government had machinery even to collect it at the central place. For instance, today, 2 per cent sales to CDA (Coffee Development Authority) and this is paid at the point when you are exporting. But when you leave it at open, and people start charging on beans and matooke and so many. In Luuka alone there were 13 road blocks trying to collect sales. People who are living just near there, if they are taking there maize for milling, are charged Shs. 20/= per tin. It was such an outcry, when you are driving all of a sudden you find a road block somewhere. It is a very primitive tax, it is very difficult to collect and we calculated that by the time the products actually arrive at a consumable level, you have paid about between 8 to 10 per cent. Because every place, at every point you have to pay and most of these people do not even have receipts and it is not even equitably possible, it is to correct. Those who are near the road blocks suffer more than those who are a few kilometres away. So it is not equitable and is a very difficult tax to correct, because you need everybody to be everywhere, at every kilometer, to see who is carrying what. That is why I said we use 'market dues' instead of 'sales.' At the moment, the Local Governments are using what they call market dues. In other words, they have specific places and where there is a market, if you bring your goods there you pay, and that is all. So, it is charged on those who have gone to sell their produce and other products on a commercial basis and not just consumable items. I beg to move that we look at the minority report and substitute 'market dues' for 'sales' for the time being. Sales can be collected, but at Central level, for the benefit of may be all those districts who are involved. Thank you very much, those are my comments.

MR. MUSUMBA ISAAC (Buzaaya County): Thank you very much. Mr. Chairman, allow me to make one observation that I am the only member on this committee who registered my dissatisfaction with inclusion of sales as an item for taxation. However, I have raised my hand from professional point of view, to clarify this Assembly on what is entailed in sales. Mr. Chairman, sales. The way people are describing it here, they are describing the mode of collecting. Some people have said, you do it at the Lint Marketing Board premises on the Invoice. Others say that you put these road blocks at every town in the district. So Mr. Chairman sales as a principle has nothing to do with the mode of collection. The point at which you collect does not make a tax sales or not. What makes a tax to be clarified as sales, Mr. Chairman, is when the tax, or sales is basically a portion of a local product in an area which is held by that area as part of their share from that particular crop. How and where you do it does not make that transaction any less sales or more sales. Mr. Chairman, this is normally a percentage of the product. Take for instance, you can say, sit and agree that for every 10 matooke that is coming out of this particular district, this district will retain one. You can have that computed in terms of money, you can have that computed in terms of matooke, you can have it, levied at the district as it leaves or wherever. So, sales as a technical term, has nothing to do with the point of collection.

THE CHAIRMAN: But Honourable Musumba, we are still having a problem. What you are suggesting is that by interpreting this, if we leave it here, begin imposing internal road blocks for purposes of collecting sales. But what you have also described gives another angle to it, that it is actually some kind of tax, some kind of share on money that could be imposed on the exportable or transferrable commodity either from one district to the consuming point or outside the country. Why do we not do it this way. May be it would have been much more neater if we had said, the finances, that is describing the sources of financing of districts, we could have said: *"The finances of a district shall consist of:-*

(a) Taxes imposed in accordance with this Constitution, then

(b) Grants from the Central Government, then

(c) Royalties," on whatever commodities, you can name them, minerals, timber, and so on.
(d) Sales," or if you do not want to use the word 'sales,' you could even from what you have described, even call it derivation tax or imposition. We set out a bit of detail on each one of them, taxes on this, of this type and that type.

(b) Grants, either block equalisation and then, (c), we talked about royalties and the commodities on which they may be imposed. Then we could say, sales in respect of commodities as Parliament may prescribe, both in terms of commodities and the manner of collection so that, we do not cause confusion. Provided you do not collect sales at point of entry from one district, it will be next, so that, we need to set them out and sort of describe each. Then, the Committee would come, with the formula in respect of grants and conditional grants, conditional and then grants, equalisation. That way, in my view, will have a very well written out section relating to these finances. But the difficulty we are trying to get now, are those related to a mixture of things. It is good to talk about fees, but we could talk about also penalties as the question was posed. Should the list be collecting court fees for cases filed in smaller courts and either retain or send to Governments? These could be set up if we took that line. We could state, what are the finances available to a district and then we set up the Heads of those finances and what is the nature of each head? How can it be collected? So that when we come to sales, we can consider sales in respect of commodities Parliament may prescribe.So that we do not begin hurting the small, small people. Parliament may also prescribe the manner of collection of sales. It is important that we share out some of this money between district and the bureaucracy that may be collecting it, like Coffee Development Authority and others.So that we say, UCDA will collect sales on coffee, but the percentage of that sales shall be paid to the districts from which each originated, that would comply with what you are describing.

MR. MUSUMBA: Thank you very much, Mr. Chairman. Mr. Chairman, I thought that may be you would have given me a chance to explain my minority position to include this. But if we are not discussing that Mr. Chairman, may I make a suggestion. Mr. Chairman, the method you have just explained is good, and we considered it, only we thought it would be too detailed to be put here. We thought that when we say sales which we have subjected to 178. We have subjected all these regulations by Parliament, at least the broad aspect of imposition. We thought this would be taken up at a Parliamentary level to say, the economy will be hurt by these road block say after every three kilometers. Therefore, they should not be there and a proper method would actually be worked out for the imposition of this. This was the thinking in the committee. Mr. Chairman, may I also take this opportunity to react to the penalties, because Honourable Zziwa will agree with me. In taxation, where there is a penalty on a tax, arising out of non-payment of a certain tax. Once that penalty becomes certified and determined, then it becomes collectable as if it were tax.

THE CHAIRMAN: Honourable Musumba is saying that sales will be collected in accordance with the Statute enabling the Local Government to do so any way. Is that what you were going to expound, Honourable Mulenga?

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, I wanted to inform you why I appreciate Honourable Musumba's point. I wanted to suggest a formulation that would retain sales there, but tied to Parliamentary provision. If we said, some duties, personal graduated tax, fees on registration and licensing and any other fees and taxes, and sales that Parliament may prescribe. I am shifting the word, so that it would only be chargeable as prescribed by Parliament. But otherwise, I tend to agree with Honourable Musumba, it could be left out.

MR. ABALIWANO: Thank you Mr. Chairman. Maybe to comment on Honourable Mulenga's point what we could also say is that after reaching level of sales fees, registration licensing and any other fees and taxes that may be proposed by the Council from time to time, and approved by Parliament. It is possible for them to come up with some new taxes and I do not think Parliament should in itself go straight to Local Government and start saying, you charge this tax. I think this proposal should come from the different districts. The other point I wanted clarification on Mr. Chairman, is, as I understand the word levy, as against charge. You levy as a matter of law, whereas you charge for a service. I would prefer the word 'levy' rather than the word 'charge.' Because when you charge, people would expect you to give to provide a

service, but when you levy, you levy as a matter of law. Whether I give you a service or not, it is legal for you to do it and you must do it and you must conform.

THE CHAIRMAN: Honourable Kutesa, are you trying to clarify something on matter just said?

MR. SAM KUTESA: Mr. Chairman, I was also having a similar problem to Honourable Abaliwano's. When the Chairman says charge does not require the law I think it is better that we say levy, but subject that to Article 178 as we passed before. In fact when you look at the subjecting of Article 178 in this Clause, it seems it is only in 3, where they are subjecting the Council or the Local Government to 178 only in making laws for effective implementation of the provisions of this Article. In my opinion, Mr. Chairman, I think this Article would read better if we started in Clause 215 with the words: *"Subject to the provisions of Article 178 of this Constitution, Local Government shall have power to levy, collect and appropriate fees and taxes."* What that means is that 178 will have enabling provisions to enable districts or Local Governments, to levy, to impose a tax. If you are going to charge royalties, you can only charge them if an Act of Parliament levies them and allows you charge and collect them. So, I think it would be better to enable the district to legislate and levy taxes subject to 178. In which case, I would have had that formulation and then I would remove 3. I do not see the value for Clause 3. If you say that subject to the provision of Article 178, Local Government shall have power even to charge or to levy, collect, charge and appropriate fees and taxes and to make laws for the effective implementation of this Article, then I would get rid of 3.

THE CHAIRMAN: Honourable Kutesa, of course, you do realise that there are three stages. 178 is the overall enabling provision, whether Parliament including the Central Government, cannot levy and demand tax from anybody unless Parliament has said so. Now, either Parliament can say so by directly saying you, districts, go and levy taxes.Or it can say, we hereby pass the Stamp Duties Act on which transactions of the following nature and these shall be collected by the district. At that point actually, Parliament will be levying it, itself, should this now begin also to repeat the levying of the Stamp duties, their job therefore is merely to collect. Unless Parliament says you go ahead and levy then they can levy, if Parliament does not say so, Parliament cannot levy, but authorise the districts to collect. I think this is where the Chairman was trying to say that it would appear the function of levying would be in the hands of Parliament and the district will only be charging it and collecting.

MR. SAM KUTESA: I am not quite sure about the meaning of the word 'charging' as opposed to 'levying.' I hope the Chairman can clarify the technical difference between those. Of course Honourable Abaliwano tried to do so by saying that charges are like fees in respect of services. What he was looking at for instance, UEB does not charge fees, but makes a charge, sets out a tariff and that charge is for power consumed. Fees are meant for services that you receive, either to drive your car on the road or to get your child's birth registered, for future use in Passport procurement and duties are in a form of taxes. So, the question now is, do we leave out the word 'levy' completely?

MR. OWOR: Mr. Chairman, I think you attempted to explain the way these taxes eventually would be imposed and collected, that the authority to impose taxes in this Constitution is the Parliament by virtue of Article 178. When we usually talk about tax laws, we must make clear who is the subject of taxation, who is the person going to pay the tax.But we must also make it clear who is going to be the person collecting the tax. When we talk of Parliament imposing tax by law, all these matters will be taken care of. They will clearly determine that tax will be collected by the district, identifying the person who is going to collect it. They will also go ahead and say, the following person or the following activities are to be taxed. Now, that is what we have understood as levying or imposing of taxes. Now, once this has already been imposed, the following activities shall be taxed by the district. What the district does is no longer imposing taxes. It has already been done by law. It only goes ahead to say, you are supposed to pay this amount of money, we therefore charge you to pay that tax. Unfortunately, some of these words have been used interchangeably. *Levying* and *charging* and *charges*. But we chose these words very carefully, because we did not want to mistake the different activities. We remove the word 'levying' because we did not want anybody to misunderstand that Local Governments have authority to impose taxes,because it could mean that. Yet if we say, they have powers to

charge, it very clearly covers the activities to collect any taxes that might have already been imposed. So, the deletion of the word 'levy' was done with the understanding that we did not want this confusion to arise. We must clearly understand who has the authority to impose and whose duty it is to collect, to charge and collect. Mr. Chairman, I do not know whether at this stage I could go ahead and respond to the other question or I can stop there for the time being.

THE CHAIRMAN: I do not know whether all these hands are in respect of members who are not clarified on the matter. Let me hear Malinga, sorry before you come in, was it a follow up, ok Honourable Sam Kutesa.

MR. SAM KUTESA: Mr. Chairman, I think there would be no confusion about who has power to impose a tax provided we subject this Article 178, because that is very clear. So, the with word 'levy,' there are two possible scenarios.
One, where Parliament says to Local Administrations, you have power to impose (X) and they go ahead and levy it. The other one where the Parliament does levy it itself. So, if you subject this Article to 178, then the word 'levy,' can also be appropriately be included. I do not know whether the Chairman has a problem with that at all.

THE CHAIRMAN: Honourable Owor, I think let us sort out this issue and then we finalise the others.

MR. OWOR: Mr. Chairman, I think Honourable Kutesa knows well that one of the worst problems in interpretation of law is ambiguity. There was a case where a Judge because of the ambiguity in a particular law said, if it was in his power, he would have arrested the draftsman, other than the person who was brought before him. We do not want Local Government tomorrow to begin saying, Article 260 says we can levy, collect and appropriate taxes. Well, very good, let us go ahead with it and the word 'levy' is the same word that is used for authorising somebody, to impose taxes.

In Honourable Kutesa's mind probably he can interpret that, but somebody else could easily misunderstand this. The best we can do is to avoid that possible misunderstanding completely. If you ask individuals here, there could be members who will agree that their understanding of levying would include imposition of taxes. Let us therefore not allow that confusion to arise either here or in the Local Government or in court. Let us be very clear that all the Local Government has to do is to find a tax that has already been imposed and just charge it, eventually go ahead and collect it and appropriate it. I therefore would still very strongly argue that there is an element of ambiguity here which should not be allowed.

MR. MALINGA IGNATIUS (Usuk County): Mr. Chairman, I want to give my own interpretation of Article 178 (1). My understanding of 178 is this, that no tax may be imposed except by the authority of an Act of Parliament. But it is open to Parliament under this provision to say, Local Administration or Local Government may collect, charge and collect poll tax as general as that one. But then it could be the duty of each individual Local Government to levy, say, okay, we have a sliding scale between 8,000 and 80,000. So, I see absolutely nothing wrong with imputing the word levy in this Article because *(Interruption)*

THE CHAIRMAN: But I think you are using the word 'levy' there, you are straining its meaning. Are you not looking for the word 'assess?'

MR. MALINGA: Well, no, because first of all, when you are levying, it is not just a matter of assessment. You will have to come up with a comprehensive regime, say, when do you have to pay, how do you pay it? All these I think will be evolved in a resolution of the district Council. So, I think the Local Government should have powers to levy or to impose tax provided that it does so with either authority or approval of Parliament. If they initiate it, then, they must obtain Parliamentary approval for it, because until they obtain it, that tax will not be lawful. That is all I understand 178 to mean. So, I find it absolutely proper to include the terms, 'levy, charge, collect and appropriate in this Article.' Thank you.

THE CHAIRMAN: You see, the Australian Constitution says, a Statute imposing or levying a tax shall deal with no other matter. Under that it was understood by the courts that they cannot set up the administrative structure for charging and collecting and accounting for the tax. So, normally, you have two Statutes, one saying, sales tax on the following items is hereby imposed and that is all. Then you have Sales Tax Administration Act which says the Chief collector shall go through the follow-

ing, shall collect in the following manner, he has the following powers relating to demanding it. If it is not paid, going to court and also other provisions relating to where it is paid and how it is accounted for and how to determine the codes of collection. Now, here may be what we are trying to argue is.I think what Honourable Owor is saying, that, Parliament should have the power to impose all these taxes and then districts should only have the power to set up in their own by-laws or regulations the administrative structures for the taxes so imposed by the Parliament. Is that how you are trying to say? If that be the case, then the word 'levy' may be causing confusion if we put it in 215. I am trying to get understanding as to whether my interpretation is correct. Can I hear Honourable Musumba, then Honourable Mulenga, then I will come around to others.

MR. MUSUMBA: Mr. Chairman, what you have stated is true. We sat in the committee and decided to have a distinction between the imposition i.e. the levying and the machinery to collect and to charge. We used the word 'charge,' because as Honourable Kutesa will agree with me, after a tax has been imposed, there is a step between the imposition and the collection and the Chairman mentioned it, that is assessment. A tax is imposed, an assessment is made, and then a collection is made. So, whatever goes with assessment is classified or can be safely termed, a charging situation. So, Mr. Chairman, we did consider this word in detail and we agreed that when we put levy here we shall cause a confusion. Mr. Chairman, without wasting a lot of time of this Assembly, I wish to inform the Assembly that I did circulate a document about three-four months ago, with many of papers. People may not have read all of them or may not remember. But I did circulate a Paper which I entitled *'Central and Local Taxation in a Feature Decentralised Uganda.'* Mr. Chairman, before I came here, I was a student of Tax Law at a Ph.D. Level Mr. Chairman. This is one of the subjects that I was taking an interest in. Mr. Chairman, one of the problems that has happened where there is decentralised taxation, is that the imbalances can be created by different rates in different districts or regions within the same country. Take for instance, if there is a market due or market levy and one district is imposing 50,000 for the same transaction, and the neighbouring district is imposing 5,000. An imbalance will be created which is not healthy for the economy.Because then, people will start shifting from one place to another. So, in order to avoid all this, the responsibility has been left with the Central Government to say that true, districts are free to impose market levy, but when you do, please, do not exceed this amount of money for this particular kind of area or circumstance. The latitude will be catered for in the charging provision and the collection mechanism. Otherwise, Mr. Chairman, you put levy here, you create a confusion, you open a pandora's box, because then, you are charging with two different layers of authority which are constitutionalised. You are charging them with the same obligation of levying taxes. So, Mr. Chairman, this is one of the things we thought to address here when we moved the levy deliberately and after much thought. May I beg Mr. Chairman, that this Assembly considers this matter favourably? Thank you.

THE CHAIRMAN: Now, Honourable Mulenga, I had said, I will hear you on this matter before we finalise.

MR. MULENGA: Thank you Mr. Chairman. Mr. Chairman, with due respect, I think the committee has brought us into an unnecessary lengthy debate. Mr. Chairman, when you summarised the position, you seemed to raise a fundamental issue. Who is to decide to impose tax? Section (1) of Article 178 says: *"No tax shall be imposed except under the authority of an Act of Parliament,* if such a person or authority imposes the tax. If imposes is the same thing as levy, then such authority levies the tax. Now, the point you raised just before I called on Honourable Musumba was that Honourable Owori is saying under no circumstances should a local authority impose or levy tax. It should only collect what has been levied by parliament. Now, that is another question altogether. Is that what we mean? Are we saying that every tax to be collected by local authority or local government, will have been imposed by parliament. I thought we were giving power to local government to impose tax, and only controlling them by saying that they shall not impose except with authority. In other words, Act of Parliament will be the enabling act. When it comes to levying or imposing, it is the local government that does. Let us me illustrate this way. The Act of Parliament may say Local government or Local governments may impose tax on the following items. Local government,(a) chooses not to for this year and therefore, does not collect or appropriate it. Local Government, (b) chooses to do so and says we shall charge so much per thousand shillings

on such an item. That surely is imposing tax. The Act of Parliament authorizes local government to impose tax and at an appropriate time the local government imposes the tax. So, I do not see the fear if our understanding is that we intend to empower local government to do the actual imposing in accordance with words of Article 178. Then the right word is *levy.* Here we can accept levy. The distinction between levy and charge has been over dramatised in my humble opinion.There is no danger that this is going to cause chaos. I think we can resolve it that way, Mr. Chairman.

THE CHAIRMAN: Honourable Wanendeya.

MR. WANENDEYA: Thank you very much Mr. Chairman. I think we have taken unnecessarily too long a time in getting the details in connection with committees' report. Mr. Chairman, as enumerated under Sub Article 2 of the Committee's report, this is what shows decentralization is here and should take place. If you look at the way it was described by Honourable Ngobi and some other Speakers on this subject. They clearly said that word cess and the amounts of taxes which were being collected was taken over by central government by Amin's regime. So, if we do not enumerate them here as you very well put it yourself, we would be doing a lot of injustice and decentralization will not be there. What I agree with, Mr. Chairman, is what has been left out in this committee's proposal and that is grants and loans from government. That section or sub section should be included here. Let me specifically also tell you something about grants in the sense that when grants are given to Uganda for development, they are given to Uganda as a country and they are not enumerated.It is up to the government of Uganda to see where these grants should be utilized. Therefore, if it is included here that grants and loans from the Central Government, the local government would know where those grants should best be utilized as opposed to not including it in the constitution at all. So that is one of the best things and is doing justice to our local authorities. Mr. Chairman, you find that most of the developments that have been taking place in our country, were really before 1967 when the local authorities put up some structures. This you can see in Mbale and in Masaka. As a matter of fact Mbale assisted to lend money to Teso District Administration for construction of Aloit College. So, if we are going to develop our country, we should not start at the top during the foundation,but rather from the grass roots.Because this building of the foundation from the top, Mr. Chairman and Honourable Delegates, failed in the Old Soviet Union, in Yugoslavia.So we must get the local authorities to build up the structure if it is going to be genuinely for the development of our country including roads infrastructure. If you go to Mbale, as an example we have been paying over 30 billion shillings but you find that they bring us in place. So, Mr. Chairman, the way the article is,other than including loans and grants from the central government, the committee did a good job. We do not have to go to the way Honourable Kuteesa was thinking of including levy because I had been exposed to taxation. I know that if we include levy we may mislead the whole article to read otherwise. In fact, even this limiting factor on Article 178 to be part of Article 215, if you want genuine decentralization, this sub Article 3 should be deleted I propose. I thank you Mr. Chairman.

THE CHAIRMAN: Honourable Bagena.

MR. BAGENA ANTHONY (Bufumbira East): Thank you Mr. Chairman. I am not a lawyer but when two lawyers argue, I have no problem identifying who has got substance, straight forward information who may be introducing a controversial matter. I have been listening to both legal and tax professionals. I was also on the committee where we wanted to be clear in taxing authority where they have experience in the local areas and where we want to keep peace in our districts. Today, there are districts which go ahead and impose or collect taxes which you want to use, in these taxes, we are causing problems. Now, we really wanted control of who is going to impose any tax. We also wanted to know that any tax that is going to be levied or imposed or charged is not going to cause chaos in any particular area. That is where we wanted parliament which is a national body which is supposed to look at what the nation intends to achieve vis-a-viz what these local authorities aim to get. We wanted get this body involved by coming in with the legislation. Now, Mr. Chairman, I have no problem word with the amendment by Honourable Owori and his committee because this contentious word levy has been dropped. Someone did bring up the idea that charge may necessitate that you are providing a service. I think that the only basis for which local government is charging anything is because it is expected to provide a service. Otherwise, why should they charge any taxes or whatever? So. Mr. Chairman,

I think there is reason why local government will be justified to charge because eventually after all they are providing a service. I would like to support Honourable Owori's Amendment because it reflects the spirit in Committee IV. I think it does not introduce controversial words that we need lawyers to interpret to us and it will leave us safe knowing that when local governments get decentralised, government will not be in position to victimise the local people who may not be able to defend themselves against the group that decides to unite. Please note that some of these charges are going towards the allowances of these groups that will so decide. So, it is so important that we have some control. Thank you Mr. Chairman.

THE CHAIRMAN: Honourable Dick Odur and then we shall summarise.

DR. ODUR DICK (Dokolo County): Thank you Mr Chairman. I was looking through the Local Government Council Statute, 1993, the section dealing with taxation. I noticed that the word *Levy* here is used in respect to graduated tax. The Local Government Council or the Urban Council have been empowered to levy an annual tax to be known as graduation tax. There are other categories of taxes and the Act empowers the councils to impose. So, it would appear that the word levy may be referring to Graduated Tax in this respect and if that could help, maybe you can make a distinction along those lines. Thank you Mr. Chairman.

THE CHAIRMAN: Okay, Honourable Musisi you are trying to give us Mukono experience or what?

MR. KIWANUKA MUSISI (Buikwe South): Thank you Mr. Chairman. I am seeking clarification from the chairman of the committee arising out of the last paragraph of the report. He has explained that District Councils would have no requirement. It would not be necessary for them to have a Vote on Account provision . I would like him to address his mind to what is coming in Article 217 on Page 26 talking about blocks and equalisation grants to local governments which are part and parcel of the budgets of the District Councils. This implies that no District Council would be able to finalise its budget until the national budget has been debated and finalised. So, I am asking in a situation where probably the national budget has taken long to finalise and in which case the District Councils will not be able to finalise their budgets before the Statutory dates when their Financial Years end. What would be the situation? What would they use since we have not made any provision for a Vote on Account for these councils? That is the clarification I am seeking.

THE CHAIRMAN: Before we come to that, let us settle the question of levy, charge, impose. Honourable Odur is saying that the present statute uses the word levy and impose. Those words are used in that statute. Honourable Owor would we still say what we could not say in 215, that subject to Article 178, Local Governments shall have power to levy, charge, collect and appropriate fees and taxes. Would that still cause a lot of problem if we subject it, and then we leave out III. Yes, Honourable Charles Owor.

MR. OWOR: Mr. Chairman, my response is that the kind of situation we are going into is a concept that has not been quite familiar in Uganda. We are going to begin implementing highly decentralised type of government where certain issues which were not capable of raising this understanding in highly unitary kind of government could begin to raise issues. Whenever we talked of graduated tax being imposed by local governments, all this was being done under a situation where local governments were very much part and parcel of the Ministry of Local Government. So, not many people understood it. This is now a separate entity taking care of its activities. Therefore, it did not provide the kind of areas of possible confusion as we could have it in the new arrangement we are going to have. I would like to argue that in order to be very clear, unless somebody feels that using the word charging is itself confusing. *(Interjection)* If that is going to make people think that these local governments have no authority to collect the money, that is going to be payable within their units. Then we could say there is a problem. In my opinion, the problem only occurs in the use of the word *levy* which has to do with imposition. My view is therefore, that we are safer by merely giving power to these people to collect the taxes that have already been imposed. I would, maybe just say we put it to the vote and see where the majority -

THE CHAIRMAN: Yes, let us hear Honourable Basaliza first because he seems to have the view that the word *charge* creates confusion.

MR. BASALIZA HENRY (Fort Portal Municipality): Thank you very much Mr. Chairman. Mr. Chairman, when you look at Article 178, it is clearly stated that no tax shall be imposed. Now, who imposes that tax? That tax is imposed by various categories. By the Local Governments and that is imposition, that is levying. Now, I belong to the Local Council in Fort Portal. For instance, there was a bicycle tax or a tax on bicycles. We sat, deliberated on it and we decided to impose it on the people, to levy it on the people.This word charge really does not augur well with the terminology which we have been using in the current type of taxes. The most important thing is to say either we impose or we levy. Rather than using the word charge because it is a bit ambiguous and confusing Mr. Chairman. Thank you very much Mr. Chairman.

THE CHAIRMAN: Honourable Abaliwano.

MR. ABALIWANO: Thank you very much Mr. Chairman. I would like this Committee to look at the Local Government Statute.Because here for instance, they say every district or Urban Resistance Council shall levy an annual tax to be known as Graduated Tax. 'Shall levy.' They are not talking about shall charge. There is another point where they talk about property tax. They say Local Government can impose a tax on property. Impose is levying a tax. So, I do not know why he is quarreling with the word levy. I think it is a straight forward thing. Two, according to what Honourable Mulenga said, we either give local government teeth to bite or else we are simply saying parliament shall be able to do the work for local authorities and they would just order local authorities to collect taxes. I think local authorities should be given the opportunity to impose and to levy certain taxes but with approval of parliament. This is the argument which we are putting forward.

THE CHAIRMAN: Honourable Kasajja Patrick.

MR. KASAJJA PATRICK (Bulamogi County): Mr. Chairman, mine is very brief. After Honourable Abaliwano has explained eloquently about levying and imposition of tax, actually in taxation today by Uganda Revenue Authority, we use the word levy and we have various forms of taxes. We have fees and licenses. Those are the ones which we would refer to here as being under the category of charge but we use one term levy. So, we levy taxes. So, Mr. Chairman, this thing which has taken us the whole day could have been rectified when Honourable Kuteesa brought it up and that is the correct thing. We should not confuse the word charge and we confuse the word levy. We should use one which is internationally recognised and that is levying.

THE CHAIRMAN: You see, I have allowed this lengthy debate on this because it is very important when we are talking about decentralization, this is the heart of it. Either you have the money with it or you do not and if you have to have a source, it should be certain rather than one which will be struck down. Honourable Musumba, then I go to the chairman.

MR. MUSUMBA: Mr. Chairman, thank you. Mine is just information. Mr. Chairman, my elder brother Honourable Kasaija is not accurate in his submission because you see Uganda Revenue Authority does not levy. The Statute is very clear, it assesses, collects and sends the money to consolidated fund. It does not levy, it does not impose any tax. All the levying and imposition is done by parliament. So, it is not true Mr. Chairman. That information is not accurate.

THE CHAIRMAN: Okay, let us take this scenario. Supposing there was a Statute which read that District Administrations shall levy, collect and appropriate taxes called property tax subject to the following provisions relating to rates. Who has imposed that tax? Is it parliament or will it be the local administration? Honourable Owor, could you answer that?

MR. OWOR: Mr. Chairman, you have just preempted the point I was trying to bring out. That the Statute which has been quoted by a number of people here are Acts of Parliament. In other words, they are provisions authorised by parliament. Here we are talking about a constitutional provision empowering local governments to do what parliament can also do and that is where we are careful not to create confusion. If you allow, by a parliamentarian act that a local government can impose graduated tax, that authority is really a parliamentary authority but if you go to the constitution itself and say local governments, you can actually also impose. It begins to be a contradiction within the document itself. *(Interruption)* That is the situation we are trying to avoid.

THE CHAIRMAN: So, if parliament says that Local Government authorities may levy property tax at the following rates, then what would the local law read like? What would be the local law by the local administration read like. Would it say property tax is hereby levied or it will say acting in pursuance of the authority granted under Statute so and so to levy taxes the rates shall be paid as follows. So and so will be responsible for collection and the penalties are as follows. To me, it would be parliament that would have really imposed that tax. Honourable Bidandi Ssali does not seem to agree.

MR. BIDANDI SSALI (Nakawa Division): Mr. Chairman, if what we are discussing is technical matter, then it should be referred to the Technical Committee. If what we are discussing is a principle, then we should not be confused by technicalities. Some of us are not lawyers as Honourable Bagena has said but when we here two lawyers parting ways, we can form positions. Now, 178 which everybody has quoted and which all is before us. It says that no tax shall be imposed, except by authority of an Act of Parliament. Now, as a lay man without going into the other locality, I am saying there can be an act of parliament which authorizes me even as an individual to levy tax, to impose tax because it says no tax shall be imposed. Bidandi do not impose tax unless you are imposing it under the guidance of an Act of Parliament. This is the common way of non-technical persons either from the tax point of view or from the lawyer's point of view. Mr. Chairman, even the quotation from the statute. The present provision by the act of Parliament says Districts levy Graduated Tax but do not levy beyond a person who gets more than 600,000 and the maximum you can levy even on that and beyond is 100,000/= per person. So, within that you can levy. So, the District Council or the District Authority goes and says how much is your income? Thirty thousand a year. Okay, you will pay this as a district. Now, to bring in technicality of charges, in my own simple English, you charge a fee and you levy a tax. That is how I would understand it. But if the technical aspect of it is what is causing us problems here, I think we should not be confused, when we are discussing a policy to be instituted in the Constitution. Mr. Chairman, Article 178 is very clear and that provision at the moment in the statute is not ultra vires of this particular general provision. Mr. Chairman, that is my way of understanding it. Otherwise, in fact, I was very surprised by Honourable Ndege who earlier on, in another Motion which he moved, was advocating something in the interest of local government. When he comes here he quotes something in his area where when maybe he or his friend is trading in maize and is given this problem of a road block here, there and then it is quoted as something that should prevent a principle of being constitutionalised here. Let us be consistent. Let us consider the principle aspect and not what is on the ground if somebody has misused it, that is different. Because there will be a clear law as somebody has said there of how it should be collected and how it should be imposed. Mr. Chairman, I end by saying there is nothing wrong at all with even the present provision of saying a district can levy,any authority can levy provided that it follows what parliament has put in place as guidance. It is my way of understanding it. Thank you Mr. Chairman.

THE CHAIRMAN: Of course, what was read out is actually an implementation if it were to be of 178 and 215. Because 178 is saying you cannot impose except with the authority of an act of parliament. The statute there is saying Okay, you districts you can levy graduated tax but do not exceed 1,2,3,4. Now, when the districts pass their by laws, they do not pass by laws imposing that tax now. They should say, because now they will just assess. *(Interjections)* At that stage now, they assess and collect. Yes. The Resistance Councils' Statute has imposed the graduated tax. Now, the local authorities, say Honourable Bidandi Ssali we know your income is so much, you pay eighty thousand. That is an assessment based on what they know about you. Then they proceed to collect it. *(Interjections)* Order! Order. I can see people walking out in disgust. Order!

MR. BIDANDI SSALI: Mr. Chairman, what about the a thousand and one taxes which are not specifically mentioned as it did there in case of graduated tax. Any district at one time or the other, can imagine. Are we saying that every time a district feels that it should charge this, then there must be an act of parliament to impose that tax? Is this what we are saying? Are we not saying that there must be a tax that allows a district to levy tax according to the law set by parliament? Otherwise, how many acts of parliament will be passed in respect every tax in every district at every time?

THE CHAIRMAN: You see, there will be as many statutes under 178 as there are taxes that are

collectable by districts by virtue of this. Be it in respect of property, in respect of land. All those that are enumerated here in (2). There must be an enabling statute because of 178 and that enabling statute is one which says now, you people you are free to go and collect stamp duties and those must be authorised by the Stamp Duties Act. Otherwise, if we have 178 as it is, there is no tax of whatever nature that can be charged by a district without the authority of Parliament under 178 as it is, unless I am misunderstanding it. Maybe my friend Ben Wacha can help me. I think we have to take a bit of time on this because some of you are going to be and some are very important chairmen of these districts and you will need the money.

MR. WACHA BEN (Oyam North): Thank you Mr. Chairman. I concur with you. The enabling act will provide for situations for the collections and the assessment of the taxes. The act will say such and such a tax will be levied by such an authority. In effect, that act has already levied that tax. The only thing which is now remaining for the implementation of that tax which has been levied. That is all. The assessment, the collection but the levying is done by the Act of Parliament under the provisions of the original provision of the constitution.

THE CHAIRMAN: What would really happen in my view under the scenario we have here would be the district would then pass maybe a by-law called the Graduated Tax Administration By-Laws. Under that they would set up a frame work for implementing and deciding on the rates for their districts. But the Act of actual imposition, although the Law does not say so, will have been by Parliament. In the sense that Parliament has said you people of Uganda your District Administrations are free to tax you and that freedom to tax you is in this statute. Now, what is left for them is to administer that tax. Honourable Malinga, then Honourable Katenta Apuuli, then we finalise this.

MR. MALINGA: Mr. Chairman, I beg to differ that when a statute says a local government may impose a particular tax, it is not imposing the tax itself, it is only authorising the imposition of that tax. Let me give an example, we have the Rating Decree whereby Municipal Councils can impose rates. They are authorised under that Decree, to impose rates but not all municipalities impose rates. So, some may choose not to impose. So, the Municipal Council in question must make a by-law imposing the rates in its area and specify it. So, I think it is possible for a law to authorise the imposition of a tax and yet do not impose the rates on each and every local government. So, we should provide for this scenario where as we decentralise, we give the different local governments options to choose from various options as to which way they should go. Because in different areas you will produce taxes in different places. In Teso it might be that the bicycle tax may be the most important tax but I do not think it would be the same case in Bundibugyo that a bicycle tax could raise a lot of revenue or even be worth it. So, we must just give the local governments authority to impose the taxation as is relevant in their areas. So, I think it is important if we are going to enable local governments to operate, to give them power. Let them initiate the tax, let it be authorised by act of parliament. Moreover, Mr. Chairman, you know that even 178 is subject to article 146 which we have already passed. Article 146 says that no law imposing any tax will be dealt with by parliament except if it is moved by a minister. All these things are what we are putting in place. When it comes to taxation, the Motion must be originated by a minister. This is scenario which we have built into this constitution. But what I am saying is we should permit local administrations to variously propose to government to impose tax. Where government finds that there are many requests for different local administrations, then you may give a general power for all local governments. But we should have a specific provision saying that subject to 178, local governments may impose tax. I think this is very important to make decentralization worthwhile.

THE CHAIRMAN: Okay, I think let us finalise this one now. We have had a very heated argument as to whether levying and imposition mean the same thing. If they do, whether if in 215 we will be creating an internal conflict in terms of granting separate powers. The lawyers are divided on the matter and they say that actually it does not make much difference but Honourable Katenta Apuuli, chairman of the committee, you have been putting up your hand. I was now summarizing. Okay, can we hear you.

MR. KATENTA APUULI: I thank you Mr. Chairman. I am hoping that Members, Honourable Delegates will bear with us and pass Item 20 which is a new Article 220, Clause 1 (a) which states: *'Parliament shall make laws requiring each local*

government to draw up a comprehensive list of all its internal revenue sources,' even if I do not go further than that. Mr. Chairman, this whole concept was drawn up before Honourable Ndege moved his Motion to allocate a specific percentage. We were trying to look for ways and means of enabling a local government to be able to raise revenue in the context that the situation pertaining is that the tendency of central government is to starve local governments of revenue. Now that we are moving towards the proposal made by Honourable Ndege to allocate a specific percentage. To me, from an ideological point of view, it does not really matter as to who imposes or levies or collects the tax provided that the monies are going to be shared out according to a transparent, fair and rational way. In a predetermined context. I really do not think that this matter should have taken us this long. The House is divided, not so much as to the technicalities from accounting stand point or technicalities from illegal stand point. My assessment of the situation, Mr. Chairman, is that the House is divided from an ideological point of view, whether local government should levy or should not levy taxes. That is how I see it and I thank you Mr. Chairman.

THE CHAIRMAN: Honourable Katenta Apuuli you were trying to confuse two issues here. We have two situations by way of financing local governments. One, is by direct taxation in accordance with authority of parliament. The other is receiving of grants from monies available to the central government. Those two are distinct. We have referred the question of grants to the Kaberuka Committee to come up so that in addition to monies raised by way of taxes by local administrations, there should be grants. But that those grants should be guaranteed in terms of minimum in respect of transferred activities. Now, we are talking about the power of the districts to impose taxes or to charge or to collect taxes. The argument has been quite narrow. Should we use the word *levy* or should we not. If we use it, one side of the argument is that it will lead to internal conflict within the constitution that can be misunderstood by districts as to think that they have power directly to levy. Others are saying because of 178, the mere act of parliament saying you districts you do 1,2,3,4 by way of taxation that amounts actually to imposition of that tax regardless of what we think. Now, because of the fact that whatever happens parliament will come in anyway. I would say that we could, for the benefit of us, and while we study it in the Technical Committee, do it this way. Take the view which was taken by Honourable Kuteesa and then we study it. That subject to Article 178, Local Government shall have power to levy, charge, collect and appropriate fees and taxes. Then we shall study it and we shall come back finally and if that is then taken, then we knock out Clause 3. Then Honourable Owori, myself, Honourable Musumba and the Technical Committee who are experts on composing Legislation and following each concept as it applies, shall look at it. Should we find that to levy, charge, collect goes beyond what we think, we shall come back and advise you. Should it be that we can actually use those terms without injury to the internal consistency of the constitution, then we shall leave it as it is. Agreed? Sorry? *(Interjections)*

Okay, then we shall have Honourable Kuteesa and Honourable Mulenga and that argument will take place in the back rooms so that we do not hold up the processing of other pieces of legislation. But I want to ask the chairman of the committee, if we did that do you agree that we can knock out 3? Agreed. I think Clause 4 is the one relating to authority. Except Honourable Kiwanuka Musisi was saying do you not think also that they need an appropriation in aid provision because they will depend on the Central Government for money. Although, of course, there should be an understanding that the districts should have their Financial Years, not necessarily coinciding with those of Central Government. But should be such as to enable Central Government to process theirs and be able to pay or indicate but don't they normally indicate in advance as to what may be included or you do not want to pass based on mere hopes? Honourable Musisi.

MR. KIWANUKA: Thank you Mr. Chairman. If that was to be done, then one would think that the discussion of the national budget is not a serious affairs. Because unless and until the national budget is finalised, the figures provided therein should not be taken as final.

THE CHAIRMAN: Honourable Owori, I know that in the current Financial Year, the Budget was approved in October. When is the Financial Year of the Districts normally? Honourable Musisi.

MR. KIWANUKA M: It is 1st October Mr. Chairman.

THE CHAIRMAN: But I think we passed the Budget. Could I be guided by Honourable Ndege, when was the Budget passed?

MR. NDEGE: 31st October.

THE CHAIRMAN: 31st October. So, the districts would have a period when they do not know how much money actually is coming from them during the Financial Year. Honourable Bidandi Ssali.

MR. BIDANDI SSALI: In fact, Mr. Chairman, that is why I do not know. When the Dr. Kaberuka Committee comes, one of the aspects of guaranteeing is that the budgeting by the districts should not necessarily be subject to the budgeting of the Central Government. Because each district knows for certain that it will not get anything less than what it got last year or the previous year. Therefore, they do their budgeting independently of what will come out because they know after all, that, they will get not less than what they provided last year. Otherwise, if you subject every district budget to the national budget, there will be complications as indeed we have experienced. By the time the national budget is finalised, you need another two, three months for the budget also of the district to be finalised. So, I would like to suggest that this should not very much influence the fact that we need first of all to know the national budget. The district already knows that it is entitled to so much. Therefore, the budget is dependent on what they, as a district hope to collect out of their own sources plus the guaranteed position.

THE CHAIRMAN: Honourable Kiwanuka Musisi, if the recommendations are taken from the committee by Dr. Kaberuka which guarantee a minimum based on a formula on transferred services, then, you can go ahead and actually budget based on that. If you get some windfall, you are lucky. If you do not, at least you know some figure. So, may be we should leave it as it is and see when Dr. Kaberuka reports if that may require a need to revisit this matter. I think we adopt (4) and leave it as it is. Agreed?

HONOURABLE DELEGATES: Yes.

THE CHAIRMAN: This is Article 215. We have amended it by deleting (3). What is (4), now becomes (3). (1) is passed subject to a review but that does not stop us making this part of the Draft Constitution. So, can I put the question on 215 as amended?

(Question put and agreed to)

THE CHAIRMAN: 215 stands part of the Constitution subject to a review of Clause 1 by Technical experts and now 216 we did. 217 has been stood over. We shall come back after lunch and take on Article 218 and that being so, let me now adjourn and we resume at 3.00 O'clock. We stand adjourned to 3.00 O'clock. Thank.

(The Assembly adjourned and resumed at 3.00 O'clock)

THE CHAIRMAN: Honourable Members, when we adjourned for lunch, we had completed discussing a report by Honourable Charles Owor on a matter of reference to him and the Committee of Members. I now give the Floor to Honourable Katenta Apuuli, the Chairman of the Committee.

MR. KATENTA APUULI: I thank you, Mr. Chairman. Honourable Delegates we are on Page 28, Item 18. The Committee recommends that a former Article 215 be amended to create a Finance Commission to advise Government in the absence of a Council of State to read:
Clause 1 - *'There shall be a Local Government Finance Commission whose composition and appointment shall be determined by Parliament except that not less than 51 per cent of the membership shall be nominated by local governments.'* Mr. Chairman, I beg to move.

THE CHAIRMAN: Should it be that Parliament shall determine compositional appointment or we can actually set it out?

MR. BIDANDI SSALI: Mr. Chairman, although I had said, when you pointed out that, I think your proposal would be correct to protect the local governments even more. Since this will be the Body that will arbitrate and any Government could influence Parliament so that they set up the terms and conditions such a way that they favour the Central Government. So, I entirely agree although right now I am not in a position to formulate. But I think we should constitutionalise the basics so that the governments are protected in this particular respect.

THE CHAIRMAN: Could you not say that it could be even simpler to say,there shall be a local government finance commission consisting of say, seven people, three of whom shall be appointed by either Parliament of any advisor of Government or by the Government and four by the local governments.

MR. BIDANDI SSALI: Mr. Chairman, I agree with your proposal.

DR. ODUR: Mr. Chairman, I entirely agree with you that in order to protect the interests of local governments, it is necessary for us to include some Figure in the Constitution. However, we could also leave room that if they are to vary any of those Figures, it must still be in favour of local governments. Thank you.

MR. OBUA OTOA (Erute County North): Mr. Chairman, I am wondering why we are using percentage rather than numbers as we have done, for instance in the case of the Public Service Commission. We did not talk about percentage and so many of the Commissions we have been forming, we have been giving actual numbers. I am wondering this is an exception. Could we not say the number and say the majority of whom shall be nominated by local governments? Why percentage in this case?

THE CHAIRMAN: I do not know. But my understanding really is that we are setting up mechanism that will be the arbiter on a number of issues in relation to sharing of resources between the Centre and local governments. You are looking at a body which is an arbiter between the two. Now if you are looking at an arbitration arrangement normally the two parties can make a contribution. But here they are saying that the local governments should have some majority representation because of the Central Government. And these powers are the ones holding the money. So, you would like to give the local governments a bit of more preference. Now either we go by percentage as they are suggesting or we just become specific and say, so many will be appointed by the Central Government and so many by the local governments to represent local governments. Either we can talk about their independence if we so wish or we can leave it as it is.

PROF. KANYEIHAMBA GEORGE (Rubanda East): Mr. Chairman, I think one of the reasons why these Figures were expressed in terms of percentage rather than specific numbers is that the number of districts is not definite. Having said that, Mr. Chairman, there is no reason why we cannot as an Assembly, determine that we would like ideally the Commission to be of so many. Five, or seven as we suggested, and then say, of these the following shall represent local government and the rest shall be nominated by the Central Government. I do not see anything wrong in determining a number now.

MR. MULENGA: Mr. Chairman, I am not clear how the district or local governments will nominate their share of the Commission. They do not have a Board of their own. Then it should be stated that it is by the association. If it is an association going to be used, then I do not think they are going to have one each. Otherwise, Mr. Chairman, I would definitely prefer an independent body rather than a negotiating body. Why do we think that Central Government will end to cheat local governments by appointing theirs. I am not persuaded that we should have one section representing Government and the other one representing local governments.

MR. KWERONDA RUHEMBA (Kajara County): Mr. Chairman, this morning when you tried to nominate Members to talk about how the Central Government can give finances to the local governments, you saw what happened here. It was like those Members were right away going to give monies tomorrow to the districts. An arrangement of this nature where 50 per cent of the Members are going to come from the districts and the other percentage is going to come from Central Government, it could even be trading of blows. Because people from the districts will be agitating for funds to go to the districts while the people from the Centre will be sometimes objective and looking at the finances and they may not have sufficient amounts. We may seemingly be protecting the Central Government and this is a scenario.

What I would like to suggest is actually along the lines which Honourable Mulenga has already suggested, that we form an impartial body seemingly independent. But also very objective body which can look at the districts. Districts should be given this and that. Along the lines of the Public Service Commission, that body could be useful. But otherwise they can see this kind of body being

bogged down by negotiations. So, an independent body, Mr. chairman, would be quite a hill under these circumstances.

MR. HASHAKA JACKSON (Kibale County): Mr. Chairman, the two Speakers have had fear of friction between those to be representatives of the Central Government on this Finance Commission with those to be appointed by the local governments. But Mr. Chairman, in the morning we a set a Committee to determine whether it will be in the percentage form or which percentage? Or whether it will be agreed that it will be a percentage to be specified to be given to the local government.
Mr. Chairman, much as we say, we have given the powers full autonomy to the governing of the local governments. If there would be representation from both bodies, (a) there would be a link between the local government and the Central Government as far as finance is concerned. People would not start heckling each other on whether the Central Government has not fulfilled its part or whether the local government has squandered what has been given. But this would be a common link between the Central Government and the local government after all we are saying that the representation on the local government will be more than those from the Central Government. If there would be a decision to be taken by the number, certainly they would take the day. But we are not trying to create cohesion between these two bodies. Representation from the Central Government is creating a link on financial obligations on the local government, after all we have found out that there should be some finance given to local government by Central Government. Now, why deny a representation of the Central Government. Even when the Government gets money be it a grant, or borrowed money, from outside countries, they sent their representatives to follow up how these Funds are being used. Even if it is a grant you do not refuse the representative of this Government. So, Mr. Chairman, we should really have a link on this Commission by having representatives of the two Governments.

MR. SSENDAULA GERALD (Bukoto South): Mr. Chairman, unless it is properly explained, I am not very convinced as to why we should have the Commission. I have yet to get a good explanation from Members of the Committee which is presenting the report. Because we are ending up with a lot of duplication which at the later stage can become a political problem, in the sense that we are not sure of the method we are going to employ to distribute money. As you are not sure of your impartiality in your exercise, you will in advance put in place an arbiter. So, that worries me for start.

The operation starts from the Budget. When you look at the main Draft of the Constitution on Page 96, in the margin, it is distribution of revenue and assistance to the districts. Now, what I see as a point of emphasis is assistance to districts. What is being imagined is that there are certain districts which are slightly ahead of others and in order to attend to these districts there must be a way of a body which when they are distributing the resources available, the revenue gets a bigger share so that it can pull up and join the rest. I do not think whether a Commission of this nature can address this matter because this matter is more political than anything else. We have within the House of Parliament a Committee on Budget and the Committee on the entire economy of the country. Now those Committees, it will be their responsibility when they are planning for the entire country, to attend to whoever is being marginalised as against the commission of this nature. Because one, it is going to be eating up revenue, it is going to be misused and become a source of political chaos for the Government of the day. Every area will have elected members of Parliament who will always be going to the Parliament which is the main Centre where all of them converge and they demand and make representation on behalf of the people they represent. So, instead I would prefer that within the Ministry, maybe of Local Government that we have a Department which deals with the distribution of revenue. That one working along side with the budgetary committee of the House, working with the Committee of the House on Local Government, will attend to how the matter should be distributed. But an independent commission, I oppose it. I beg to move that this be deleted from our Draft.

THE CHAIRMAN: It is seconded that 218 be deleted.

DR. KABERUKA WILLIAM (Ndorwa West): Mr. Chairman, I just wanted to think a bit aloud because we did establish a planning Commission and Executive. I am wondering whether we could see how this could fit in. Because they will be planning for the entire country, and I imagine they will be receiving development plans from these districts. Why can we not attach this aspect of revenue sharing because they will having an aspect of the entire economy?

DR. HIGIRO SEMAJEGE (Lwemiyaga County): Mr. Chairman, looking at the recommendation just on the side, you see there is a reason for it. But when you see what we have already provided, it is the service that we would like the Commission to perform is already taken care of. There are a number of points that we need to look at here. One is that, we have already said that there should be a non-percentage which will be provided in the Constitution.

Two,as Honourable Ssendaula said, in the Parliament there are two Committees which care to see that the Estimates are fairly distributed. Those will be very keenly seeing that there is fairness because in those Committees Mr. Chairman, nearly all the districts are represented because people get into them with interest. So there will be representation there. Then Mr. Chairman, as Honourable Kaberuka has just said, we have already provided that there should be a planning authority which will be directly under the Executive. This planning authority will be looking at the priorities of all each district and they will know where things hurt most. For that reason once you have all these institutions working together for the interest of the whole nation, then you do not need to have another Commission which will just be a kind of duplication. I support the deletion. I beg to support the Motion. Thank you.

MR. BEN WACHA: Mr. Chairman, we have in accepting the concept of decentralization made a new administrative policy for all our local governments. Now, as you indicated this morning, the area where conflict could most probably come between the Centre and the districts is in the allocation and sharing of finances. Now, Mr. Chairman, I would hesitate very much to remove what could possibly iron out those conflicts should they arise. People have talked about Committees in Parliament. But these Committees, Mr. Chairman, some of which have been there have been performing functions which are outside the processes and the policy concept of decentralization. I think this Commission which is very wisely being provided for, is to see to it that whatever distribution of Funds between the Centre and local governments is going to take place, it must take place smoothly. Should there arise any problems in the distributions or in the sharing of these resources, then this should not dislocate the performances of the local government and Central Government. Mr. Chairman, I would urge Members to think very, very carefully before removing this Commission from this Constitution. It might be the only way of smoothing the wheels of financial performances of both governments. Thank you.

MR. SABIITI JACK (Rukiga County): Mr. Chairman, I do not see what the role of this Commission will be in this Constitution. Budgeting for public Funds has a system. After decentralization, most districts were given votes, and each district will forwarding its requirements to the Central Government through local governments. These requirements will be discussed by the Ministry of Finance. If there is a problem like any other Ministry, the Minister for Finance meets those districts or Ministries to discuss their respective requirements.

THE CHAIRMAN: Honourable Sabiiti, I thought here we were talking about grants. If we are talking about grants and we say there is going to be a formulation, then that formulation is not based on submissions from districts. It is based on a criteria of giving the degree of decentralization of activities. The amount of money for every activity that has been centralised. Once you involve that formula then automatically the treasury is supposed to sit down and apply that formula to determine the amount of money available without waiting for any requisition from the district. The districts would then apply what is likely to come from the Centre to do their own budgeting. But what you are suggesting is that there will be some kind of accounting officer through the Ministry of Local Government who would bring in requests from the districts.

MR. SABIITI: Mr. Chairman, I follow your argument. But the reason why some of us are advocating for the deletion of this provision is that funds from the Central Government should have one authority which should actually take decisions. We should not have a Commission on this side and then have the Ministry of Finance. The entire budgeting should be the same. But if we start giving grants and have Commissions to discuss with Local Government or Ministry of Finance, it causes confusion. So, I was saying that we should have one system, that is the system that we already use. Let local government have their own votes. What they could call grants, also could come direct under their votes. So, if this was done, Mr. Chairman, it would be clearer and straight forward. So, I would certainly suggest that this provision be deleted.

MR. BIDANDI SSALI: Mr. Chairman, first of all let me state that in almost every Chapter we have dealt with and are dealing with, Members have been taking advantage of first of all, of what we want to put in place, but also making some references to where the system has been operating. Now, when we were working on this Chapter as the Chairman said earlier, we had a lot of references including consultants we invited. Including constitutions of similar nature we are trying to establish especially as regards to a decentralised local government. In this particular case, it is a hybrid of what is obtaining now and what we could borrow from those which have experienced systems. Now, this body, Honourable Sabiiti, is not a body that is going to be participating in the formulation of a budget. That is not its work. Its work is as indeed you have seen there, to help local governments which are in weaker position in relation to the Central Government for the Constitution to recognize that the Central Government or the President should take heed of what this particular Commission is advising. When you talk of a formula, Mr. Chairman, although we may say, later on, that at least X per cent must transferred to Local Government, this percentage is not static. We are saying at least. Now, at what time shall a decision be taken that from 30 should now be 45? Will it be on the initiative of the Central Government and can it be, and it is, if they say now 40, is it in the best interest? We are saying here that this Commission the local governments can sit and say, no. The Central Government is proposing an increase of five per cent only. In our view it should be 45 percent because of X and Y and Z. So, this Commission sits and goes through the elements of argument on the part local government and on the Central Government. Then it comes to the position to advise the President. So, this advisory aspect is continuous. Then come to the position of equalisation. It will be very, very dangerous to leave the power of decision on the equalisation grant on the whims of Government. A district should be able to stand before the Central Government to say, No, what you are giving me as an equalisation grant is little because of X, Y, and Z. But because an individual district or two for that matter, is too small and too weak in relation to the power of the Central Government, they now use this particular Commission which believes for all local governments depending upon the topic. So, this commission puts a case for this particular district or a number of districts to say to the Central Government that No, what you are proposing does not really help in this particular case. Now, there is also the element, Mr. Chairman, over the implementation of what has been provided. Currently, a number of districts are suffering. At one time, the Ministry of Finance is saying, although you are entitled to a release of so much, but we have only been able to release so much. A district has nowhere to run to. Alright at the moment some of them have been coming to the Ministry of Local Government and through public relations, the Ministry of Finance somewhere says okay, instead of that we shall release so much. Now, this Commission is there to attend to every inconsistency that will provide as Honourable Ben Wacha has said between Central Government and local governments. I would strongly request the Members that this is not a matter you should look at from a simple logical point of view. It contains one very important aspect of the working of the decentralised system of local government between the Centre and local.

Finally, Mr. Chairman, one Member was asking how will it be formed and so on. The local governments all over in this system have their own association. There is a local government association. There is also the urban authority association. Then they have a super- local government authority between them. It is these who sit at the moment with representatives one appointed by the Minister of Local Government and another by the Minister for Finance, and two co-opted by them, when the two come together. So that they go into the detail of what could be a cause of problems between local government and Central, and even between two or more local governments. So, Mr. Chairman, I would appeal to the Members really not to delete this but go ahead perhaps and specify as the Chairman was implying so that this advice of this body is constitutionalised. Thank you.

MR. MWEBESA FRANCIS (Presidential Nominee): Mr. Chairman, I can see that this body, the Commission, is going to become a source of conflict. Earlier on in Legislature, we all agreed that Parliament is supreme, at the same time the Parliament is a Parliament of Uganda. Now, we have local governments to give them grant funds. We all agreed until such a time the new Committee we have appointed to go on how much percentage they will get. But here you have a Budget. This Budget is given by Government and approved by Parliament. Now, as the previous Members try to;

advance. He says that this body is going to assist the local governments to be able when they have had a less or those who are less privileged are having a problem.

I would think the Parliament or Government of Uganda is therefore, the entire Uganda. Now, if you put in a body which is with Members who are from the local governments more than as we say 51 per cent, more than the Members of Parliament. We have already said that in case of this nature, this arbitrator will be in the favour of local government. So, the whole thing is just contradictory to budgeting,approval by Parliament, a budget of Government. Now we have this body much as I can see that it is supposed to solicit more for the less privileged districts. But if you put it in this constitution, it was going to be a source of conflict about the set up that we have already agreed. Because even if it is in the advisory capacity, in most cases if you put something in this Constitution and you say it is in the advisory capacity, at later stage if you want advice, if you do not want to take it, they do not ask me for the advice. But then again you are establishing the President that the local government will have more members in that body. In other words Parliament here is not even supreme. So, I can see putting up this Commission will be a source of conflict. Okay it is supposed to advise the President. The President has got other forums which have just been mentioned that in Parliament there is Cabinet. There are planning commissions and committees. The Government is the Government of Uganda. Therefore, Mr. Chairman, to me this looks that this body is being formed to find the way of eroding the actual power of Government of the day. So, Mr. Chairman, I am opposed and I support the Motion of deleting this Commission.

MR. ATWOKI AMBROSE (Youth-Northern): Thank you, Mr. Chairman. Mr. Chairman, I think Honourable Members who are supporting the idea of deletion have failed to grasp the idea behind the local government finance commission. Mr. Chairman, first of all I want to state that the success of the novel idea of decentralisation will depend on how the finances are distributed between the Central and Local Government. Mr. Chairman, I want to state here that the function of this Commission must not be confused with the functions of Committee of Parliament. The function of this Commission is to address specifically the issue of allocating finance between districts and between the Central Government and local governments. So, it has a specific role which demands attention over time. That is one important aspect of the Commission.

Mr. Chairman, as you have heard from Honourable Bidandi Ssali, he stated that he used this public relations which was unofficial to try and make good to certain situation in favour of the districts who are complaining. Mr. Chairman, I believe that the existence of this Commission will go along way to address such kind of problems which arise as a result of lack of specified structures to solve such problems. It will provide a forum for local authorities which will enable them to negotiate face to face with the Central Government in as far as the finances and its location to districts is concerned. I do not think there is any other better way to provide for such an opportunity than putting in local government finance commission. Mr. Chairman, it is also important to note that the arbitration role of the Commission will go along way to make the implementation of the decentralisation policy a success.

Mr. Chairman, I must also assure you that we envisage a lot of conflict which will arise as a result of allocation of finances to districts. This morning we even failed to agree on what formula we should use because the matter is the lifeline for the success of decentralisation. You have to decentralise the functions, responsibilities and powers, of the whole local government for the success of all those activities is to finance them. So, it is possible that this area will be a very high potential area for conflict in the future administration of the country. So, there is need for some commission to perform an arbitration role where the local authorities and the Central Government will sit on the negotiating table and the matter resolved amicably.

Mr. Chairman, some people have stated that there exists national planning authority. Mr. Chairman, I want to state here that the functions of national Planning Authority is not focussed. It is to deal with the general planning of the nation. But here we have a specific role to play in relation between the Central Government and Local Authorities. There is no other better structure other than the Commission which can ensure that they have a focus planning and endeavour to attain the wish of people to see decentralisation in its true colours. Mr. Chairman, with those few remarks I think the existence of local government finance Commission is imperative to ensure that the policy of decentralisation is successful in totality. Thank you.

DR. MAGEZI DAUDI (Jinja Municipality East): Mr. Chairman, I am trying to understand what the functions of this local government finance commission are. Because it is only on that conviction that I can support the creation or the deletion of this Commission. When I look at Paragraph (a), (b) and (c), I note first of all that this Commission is advisory to the President. It is clearly stated that the local government finance commission shall advise the President. Therefore, it is not enforceable in Law. The advice can be taken or rejected without any reason. I therefore, think to myself that we are trying to create a lobby in the form of a Commission to try and make sure there is equitable distribution of resources. My first question is, is it wise to constitutionalise a lobbying Commission? Is there no facility within the procedures of Parliament where there could be a standing Committee on this matter? Because at least whatever comes out of the standing Committee is enforceable and it is binding on Government so that it can be able to act in accordance with the resolutions passed by Parliament. I can see that there will be need to look again at the way we passed the Finance Chapter on matters of budgeting. Even in Parliament the Sectoral Committees receive a Budget already drawn out without their involvement. Even so, under this one, I do not suspect that the Ministry of Local Government will be calling the local finance government commission to say, now here, look at our Budget. This is the proposed Budget that is being done by the technocracy, and the only people therefore, who can ably challenge the Budget is the House Committee in form of a Sectoral Committee. Since Parliamentarians are supposed to be watchdogs the majority of whom will be coming from these districts. I do not think that there will be so transformed as to think that they belong more to the Centre than to their districts and cannot therefore, articulate on any imbalances that may exist within the system. If we had better functions for this Commission and unfortunately or fortunately, there is already a Commission within the present Ministry whether it is backed by a constitutional provision or not, I do not know. But it was created and is performing its duties. If it was formed outside the constitution, there is not reason why it does not continue. But for matters of this Constitution, I beg to support the proposed Motion to delete the Commission.

MR. KIWANUKA MUSISI: Mr. Chairman, I stand to oppose the Motion. In the first place, I fail to see how conflict arises if Article 218, Clause 2 is read carefully because this Commission that is proposed is meant to advise an Executive President. The idea behind being exactly what Honourable Magezi has said. The Budget making process as we know it today, comes out of the preparatory stages without necessarily taking into account the views of the interested parties. In this particular case, we are trying to cater for the interests of local governments. I see nothing wrong in providing for the way through which the inputs of local governments can reach the President. Therefore, whoever is putting the Budget in place, in the process of making that very Budget. As we stand now if we are to discount the existing local government finance commission now, which is in place as a result of a statute, under which we operate, one would say that decisions of Government relating to what is given to local governments are arbitrary. This is the whole essence of proposing such a Commission to be in place. We want to remove a situation where somebody sits down arbitrary and says you take that. We want those who are going to benefit to have an input too.

This Commission is expected to carry out a continuous process of negotiations between the Central Government and local government. In a decentralised system, as the Honourable Member for Nakawa has pointed out, a system of directives from Central Government to the lower governments is replaced by a system of negotiations. We must accept that under this system the role of the Ministry of Local Government has to be a changed one. Mr. Chairman, we should accept that in the duty to provide services and to plan for development for the country we have two main actors. Namely the Central Government and the local governments. Therefore, since we have decentralised we should seize to look at local governments as mere implementation agents of the Central Government. These are important partners which must be listened to at whatever possible level. It has already been pointed by earlier Speakers that local governments in this role are weak partners. They are important partners but weak compared to the Central Government. Every possible effort should be made to facilitate them to have their voice being properly heard. Therefore, one of the ways to enable local governments to make their voices heard by the Central is through this local government finance Commission. Mr. Chairman, reasoning like Honourable Sabiiti tried to do is an indication that one is completely stuck in a highly decentralised system. I would like to urge Mem-

bers to transfer themselves totally from the Centralised system because we have removed it through what we have legislated. We must lay the ground and a firm ground for that matter for the decentralised system. Mr. Chairman, through you, I would like to urge Members to look at the other functions of the local government finance commission more critically especially those given in 2 (a) and (b). Now, when you go to 2 (b) we are seeing a situation where Government is discussing because this discussion should not be envisaged only on the flow of Parliament. It should be envisaged in the offices of the Ministry of Finance, Planning, and so on and so forth. Unless we provide for these avenues, where else would you expect the express view of the local governments to be listened to by those people charged with assembling the Budget of the nation. Mr. Chairman, the function in Clause 3, is generally misunderstood. The local government finance Commission shall arbitrate in intergovernmental financial disputes. This is where some members have developed fears that the local government finance commission will sit and call Central Government and local governments and say, now where is your disagreement we have ruled in such and such a manner. The spirit behind this Clause was that even the local governments very often get areas of conflict. They have no forum which takes care of this before decentralisation may be the Minister for Local Government was playing that role. But I will give an example, Mr. Chairman, like it happens now, Kampala City Council has a lower minimum Graduated Tax at starting point than Mukono. Because of that, people who should have paid tax to Mukono, especially, those who live near the border between the two districts, run to Kampala and pay their taxes to Kampala and I have said as it is happening. Now who is to arbitrate? This commission will take on such cases, and settle the matter between Mukono and Kampala. So when we talk of arbitration, please, bear in mind that there are areas of conflict even between the local governments. In order to make sure that there is amicable settlement of such districts, the local government finance commission has been given this role. Mr. Chairman, I would like to appeal very strongly to Members to oppose this Motion because deletion of this Motion is a direct negation of the principle we have legislated for. That is giving the people meaningful power and responsibility. Thank you.

THE CHAIRMAN: Honourable delegates we have had a very long debate on this matter, I would like to assist the Members in a way. This idea of a commission of the type they are talking about is not really a new creation. It exists in many countries where they have dissolved powers from the centre to districts essentially to make sure that there is sufficient resources even at the periphery. In the Austrian situation they call it the state grant's commission, they have got states, but because they put most of the taxation powers, income tax, customs, exercise into the hands of the Federo government. They set up a structure for grants from the centre to states, they established as the constitutional requirement a state grant's commission who meet and apply the formula one year to the next. Then advise the Prime Minister's council, the Premier council, i.e. a council chaired by the Prime Minister and all the Primers of the states in order to agreed to on what is transferable from the centre to the state before they write their budgets, and this is done in advance. In Papua New Guinea they call it, I think they have a word for it- a name for it. They call it the national physical commission and one of its functions is to make recommendations to the national executive council i.e the Cabinet on the allocation of unconditional grants to provincial government and as between provincial governments. Then they also go on to talk about powers of arbitration in disputes arising from application. For instance, if you agree that you will apply sets and there is a dispute as to whether coffee originated from Masaka or from Mukono on the basis of sunny processing plants. Or between Mpigi and Masaka and so on and so forth. Then they set up a mechanism of that nature to solve issues of conflicts between the provinces as they call them or the states in case Australia. But that follows the mere fact they agreed on mechanism for decentralization. I thought I should point that out it is not something that is new really, it is a matter that exists but the question is, do we need it Uganda? That is all you want to say.

DR. MATOVU BYATIKE (Entebbe Municipality): Mr. Chairman, thank you very much. Mr. Chairman, this commission is one of the forum where the local governments could get together. There are so many ways that probably they have to sit alone, and discuss with the government as such. This kind of commission is one of them. Mr. Chairman, this is another point. This is one way where imbalances in the distribution of finances could be discussed between the local government or all the different districts. They could sit down

and say well now let us find a common fair way of distributing the resources as such. And thirdly, Mr. Chairman, I think one way of coordinating devolvement as such in the country is through such a commission whereby the local government sit down together and discuss how they can really devolve in a kind of coordinated way. Mr. Chairman, we have been listening to select committees whereby we listened to ministerial statements during budget time. Very often we have been hearing about ministers crying about arbitrary cancellations of items in their budgets and so on. If they have a forum as a Cabinet where they can discuss these things, arbitrary cancellations of items,they can not iron their things and it needs the minister of local government to come in and sort of coordinate. The local governments need a kind of forum, need a kind of commission which can help them to put their voices together and discuss or negotiate for their development or the distribution. So, Mr. Chairman, I am for this commission, I am against the deletion. Thank you very much.

MR. OBIGA KANIA (Terego County): Thank you, Mr. Chairman. First of all according to me, this commission we are trying to create contrary to the view that it will strengthen the powers of the districts in allocating these resources in fact, will take off some of those powers . This will be a centrally located commission and you cannot rule out the influence of the minister for that matter minister of local government wherever that meeting will be held in directing this commission to allocate the resources in a particular manner. Secondly, this morning we put in place a committee to come out with a specific formula which in my view, will already have done the significant function which would be carried out by this commission. That is advising government on how to allocate the funds from the consolidated funds of the central government. And assuming that there will be a formula in place,then this is going to be a redundant commission. Thirdly, Mr. Chairman, if you see the other functions which have been specified in Clause (2) for this commission, there are all functions which have been catered for some where else in the either the finance Clauses for the local government, or in other parts of this commission. For example, they say, the local government finance commission shall arbitrate in inter-governmental financial disputes. I do not see how that commission in an advisory capacity can ever arbitrate successfully in a financial dispute. Sub-Clause (b) of Clause (2) says, the basis for making both grants or grant subsidiaries or subsidies or other financial assistance out of public funds to local government. For making special provision for the least developed areas this is what is already been catered for or what we are expecting to be catered for by the formula that the committee will set this morning will have already determined. So, in my view it is a totally redundant commission and I would strongly beg the proposal by Honourable Ssendawula that it be deleted. Thank you.

THE CHAIRMAN: Let us decide now, we have had enough debate. The question is this, the question is that 218 be deleted for the various reasons that have been advanced on the Floor. I now put the question.

(Question put and negatived)

THE CHAIRMAN: What is left to be discussed is the question of how it should be reflected in the draft constitution. The argument arose that the way it is written in 218 (1) is not good enough.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. Having listened to the arguments and proposals made by those who wish this commission to stay in. It is a high breed between an advisory body to the President and some kind of trade union for local governments, and we need to marry those two points in this article. Mr. Chairman, I wish to move an amendment that Clause (1) of this article be deleted and be replaced with the following formulation which reflects the two points which Honourable Members have argued about. That Clause (218) be worded as follows: *"Clause (1) (a), there shall be a local government finance commission which shall consist of a chairman, deputy chairman, and five Members appointed by the President."* That is the first Clause. Clause (2),(3) of the Members shall be persons nominated by local government, through their association.

THE CHAIRMAN: Honourable Kanyeihamba, you said there was (1) (a), now you are saying two.

PROF. KANYEIHAMBA: Sorry two (2), Clause (1) was what I read that *"There shall be a local government finance commission shall consist of a chairman, Deputy chairman and five Members appointed by the President,"* that is (1) (a).

THE CHAIRMAN: Is it the five members who will be appointed by the President, or the chairman and Deputy chairman and five members. You see it is in a such away that you do not appear to be referring only to the five members to be appointed as against chairman and Deputy chairman.

PROF. KANYEIHAMBA: Mr. Chairman, my amendment is that all these people, that is the chairman, Deputy chairman and the five members shall be appointed by the President, however,-

THE CHAIRMAN: Who shall be appointed by the President? If you say that, then you are referring to all. But if you put it the way, you are referring only to the five members to be appointed by the President.

PROF. KANYEIHAMBA: Presumably, Mr. Chairman, my drafting is not clear, but the intention I had here was that chairman, shall be appointed by the President. The Deputy Chairman shall be appointed by the President,and so will the five members.Except in relation to the five members,three of them shall be persons who are nominated by the local governments and President act of appointments merely a formal act. They will nominate three Members through the association and the President will simply appoint them. That is my amendment, Mr. Chairman.

THE CHAIRMAN: Let us get your amendment clear. Can we get your amendment clear. You are saying there shall be a local government finance commission consisting of the chairman, Deputy chairman,and five other members who shall be appointed by the president. Then you are saying, two -

PROF. KANYEIHAMBA: Then I am saying (b), three of the members those are the members the five members referred to in (1). Those shall be persons nominated by local government through their association.

THE CHAIRMAN: So the local government shall actually be appointing. So what you are trying to say is, subject to paragraph (b), there shall be this and that composition.

PROF. KANYEIHAMBA: Yes Sir.

THE CHAIRMAN: Then (b), three of the members referred to in (a) shall be appointed from a list submitted by the local government. Is that what you want to say so that the local governments can meet in Mukono, they may come up with 10 members or 39 Members each district coming up with one. Then this list goes to the President and from whom he appoints three?

PROF. KANYEIHAMBA: Mr. Chairman, that is not what I had in mind. What I had in mind is that the association of local government shall meet in Mukono and nominate three candidates and submit them to the President who shall appoint them. In otherwords, he has no more than three people nominated. Should he reject them? Then we will have to nominate again but the idea is that the local governments Mr. Chairman, once they have decided that I want to be represented by Father Gaitano, then that should be the one to represent them. The President simply appoints them because that is his constitutional duty. But the candidate is already declared as the choice of the local governments, and you do not have a choice between three or four that is the formulation I prefer.

THE CHAIRMAN: But it is not coming out clearly.

DR. MUGYENYI PONSIANO (Isingiro North): Thank you, Mr. Chairman. Mr. Chairman, I would have preferred Honourable Kanyeihamba's formulation in order to be clear, to clearly spell out the members who are to be appointed by the President. Those who are to be appointed by the local government so that they are not mixed up. I would have loved to have the appointees of the President talk of the Chairman, the Vice chairman, and two other members. Then three members to be appointed by the local government because Honourable Kanyeihamba is talking of a total of seven people. He is talking of chairman, vice chairman, and five other members. So in otherwords he is saying that three of these seven will come from the local governments but merely appointed by the President. I would not love to have that. I would love to have the appointees of the President separately from the appointees of the local government. Because the purpose of having this when we were in the committee was that, since this commission is going to arbitrate between the local government and the central government. There should be a say in terms of membership from all the sides. If you put it the way he has put it, then you are giving the central government an upper hand. So I would love to have the appointment of the President being the

Chairman, deputy Chairman, and two other members of the commission. I would prefer to have the President appointing the chairman, deputy chairman, and one other member. Then we have four other members appointed by the local governments so that they form the seven members of the commission, Mr. Chairman.

THE CHAIRMAN: Okay, let us first of all formulate before we debate, I can see there is a lot of concern. My view would be this to be simpler to proceed this way. First you state the establishment and composition. You go to the next stage, the appointment. Then the next stage the designation of chairman and deputy chairman. So you say, there shall be a local government finance commission consisting of seven members. Two, the seven members referred to in (a) Or (b) or (1) whatever it is, shall be appointed, (a), three by the President. (b) four by the local government. Then (3) you say the President shall designate one of the members to be chairman and another to be deputy chairman. Or you say, the members shall elect among themselves one to be chairman and another to be deputy chairman. That it is easier to state because otherwise we are now confusing the power of appointment with establishment and composition. That is where we are finding wording quite difficult to come out. If we agree that is the Motion then we leave it on the Floor now we debate whether that should be the provision or not, and we vote on that.

PROF. KANYEIHAMBA: Mr. Chairman, I am very grateful for your very able technical assistance, and it does clarify the Motion. What I see is that the principle is, we establish a local government commission. There is no doubt about that,and I think that Members agreeable. There should be a chairman, and a deputy chairman appointed by the President,we can put it that in the manner you have established. The question which is debatable is of the five members of the commission. There is also a suggestion that the majority of these should represent local government. The suggestion was that they should be four. So in that case then, Mr. Chairman, it would be the chairman, the deputy chairman and one other Member to be appointed by the President, and then the local authorities through the association would nominate the other four and that would complete the composition.

MR. OKALEBO EPHRAIM (Bukedea County): Mr. Chairman, I go along with your formulation and only come to disagree with the suggestion put in by Honourable Kanyeihamba as to who elects the chairman and the deputy chairman. I am of the view that out of the members of this commission, the members themselves should be given that freedom among themselves to elect their own chairman and vice chairman. So that to contain the allegiance of these officials to the committee rather than having someone who has been appointed where he may turn round and give allegiance to the person who appointed him, Mr. Chairman.

MR. AKURE PETER (Jie County): Thank you, Mr. Chairman. The formulation you have put is just correct, but perhaps what I would want to hide is the third person could be the secretary. It is very important you have a secretary who takes the minute of that body. Two, Mr. Chairman, that is a body which is so big and it is well recognized. I do not see the reason why we are saying the committee should appoint the chairman and Deputy chairman. It is like the public service which appointments are done by the President. Of course, this is also a body which is well recognised which must always be seen as a body which is very strong governing the affairs of local government. Mr. Chairman, it is also normal when such appointments like the executive of some organization, let us take CMB. For example, the President normally appoints the executive and then the body now appoints other members of staff, the management. It will be a bit difficult if we say the members appoint the chairman as if that is a small body. I strongly support that a President could be the one to appoint a chairman and deputy chairman and then the third person then these other four,the minister concerned, can actually bring the names to Parliament.Or suggestions can be brought before and then the Cabinet normally approves. Thank you, Mr. Chairman.

MRS. RHODA KALEMA (Kiboga East): Thank you, Mr. Chairman. Mr. Chairman, the reason why I supported this Clause not to be deleted, I know the whole article. I thought if this commission is going to be under the local government,this was going to assist to take care of the districts better. Now if the President is given the opportunity to nominate three people, and the four are nominated by the districts themselves. I feel that the President should not come into it to choose the chairman and the deputy chairman. I would like to see this body of seven elect among themselves the chairman and the deputy chairman because they are supposed to advise the President. And I would not like to compare the

functions and of course, they are not the same. I do not agree with Honourable Peter Akure when he compares this body with public service commission. Because public service commissions functions entirely different from the functions of this body. So although the President can appoint the chairman and deputy chairman with the approval of the Parliament, in this case the job of this commission is to advise the President regards the finances of tile district. So I do not see the relationship.

DR. CHEBROT STEPHEN (Tingey County): Mr. Chairman, I wish to go along the proposal made by Honourable Okalebo. Now this commission which they are creating is supposed to be by law for the local authorities which is supposed to lobby the President to ensure that there is equitable distribution of finances to various districts. Now the moment you get the commission members so that the Chairman and deputy chairman be nominated by the President, then compromise their position. My view is that the local authorities themselves should be able to elect their own chairman and their own deputy so that they are impartially performing their duties. And also they will be answerable to the local authorities themselves. Thank you, Mr. Chairman.

MR. RUZINDANA AUGUSTINE (Ruhama County): Thank you, Mr. Chairman. Mr. Chairman, I do agree with the composition that has been proposed. But, Mr. Chairman, I do think that the chairman and deputy chairman should be nominated along with the members. If we leave it to the members to elect among themselves they will be new to each other. Perhaps although for independence purposes it may look better for them to elect among themselves. It might help them if they start with the chairman and the deputy chairman: May be a chairman coming from the Presidential side and a deputy chairman from the local government side something like that. But leaving, it to themselves again lends the whole commission to lobbying from the very beginning among themselves and politicking and so on. So I do think that there should be a chairman and vice chairman from the very beginning. Secondly, Mr. Chairman, the more important thing I wanted to talk about, Mr. Chairman, is the signition of the commission being only limited to finance matters. Although the subheading of this chapter is finances of the district, I am not sure that the matters which need arbitration or which may cause disputes or conflicts are only matters of revenue. If it became a local government commission rather than just finance. There may be other matters which are outside finances that may need a commission of this nature to supervise, to arbitrate between government, between districts and so on. But of course, there is a difficulty that this comes under a sub-heading of finances of the districts. In which case if it was agreeable we would introduce another sub-heading of local government commission so that we widen the mandate of this commission. There may be other matters other than finances that may need to be dealt with by this commission. Matters of personnel, matters of development the matters of culture, matters of other things. Therefore, I would like to suggest to the Assembly that the Assembly may wish to widen the mandate of this commission beyond just finance. That is the major thing I wanted talk about rather than the selection of the chairman and so on. Thank you, Mr. Chairman.

THE CHAIRMAN: But Honourable Ruzindana that would be a major exercise to be studied before we agree as to what areas we can bring in a commission. Particularly when you are trying to say, let power go and then you set up a central body again for supervision. But may be Members can comment.

MR. LOKERIS SAMSON (Dodoth County): Thank you, Mr. Chairman. Mr. Chairman, I am opposed to the idea of the President appointing the chairman and the deputy chairman. For reasons that, the moment you find the chairman and the deputy are appointed by the President, and with other members who are not appointed by the President, they may easily not serve the interest of the local government. I would give an example to Members in a case of Karamoja Development Agency. In KDA, the chairman is appointed by the President, the Director is appointed by the President who is the secretary, and five other members who are appointed by the President. The rest of the Members are the ones elected at RC IV council as chairman may join. We have always had a problem in KDA because there was a time when the other members elected by the people at the county level tried to raise an issue that the agency was failing. The members who were appointed by the President resisted even when the others said let us try to go and see the President. These people said no there is no need. We have not failed. That is why you see now the KDA which was there for Karamoja has col-

lapsed because a group which has been appointed by the President did not want their own weaknesses to be pointed out and present the views to the President. So if we give this opportunity for the President to appoint,and these people are not performing well, it is difficult even for the President to change the chairmanship or the vice. Because it will take time for him to study he may think people are just accusing them when actually they are doing the right job. So the moment we give that to the President to appoint the commission will completely collapse. So I oppose the idea. Thank you.

PROF. KANYEIHAMBA: Mr. Chairman, first of all the Honourable Members will be glad that as a result of their contributions I have greatly improved the drafting of this amendment. So it is acceptable to the greatest number. Mr. Chairman, I wanted first of all to respond to one or two points

THE CHAIRMAN: But could you tell us how it reads now.

PROF. KANYEIHAMBA: Yes, Mr. Chairman it will read as follows: Article 216 Clause (1). *"There shall be a local government finance commission which shall consist of a chairman . deputy chairman, and five other members."* (a), sorry, we have now to revert to (2) so that is Clause (2), the chairman, the deputy chairman and one member of the commission -

THE CHAIRMAN: And one of the five members referred to.

PROF. KANYEIHAMBA: And one of the five members referred to in Clause (1), shall be appointed by the President. That is my amendment you may oppose it. *"Clause (3), four of the members referred to in Clause (1) shall be nominated by the local government for appointment by the President."* Mr. Chairman, if I may respond to some of these question, I think we are getting confused on this matter. Whether these people are directly nominate by local government or not, the appointing authority remains under our constitution, the President.Therefore, you cannot move away from that constitutional requirement that the President will appoint. Of course, he is bound as in (3) here to appoint members who have been nominated by the local authorities. But he must do the appointing unless we are trying to make some unusual constitution. So the executive authority to appoint, to draw instruments of state preside in the President. It is formal manner for example in (3). So, Mr Chairman I want to assure those Members who are a bit concerned that appointment by the President is simply a formal act and in relation to Clause (3). He would have to appoint those who have been forwarded to him by the local governments. So people should be assured of that. Secondly, Mr. Chairman, Members should look at the functions which this commission is to do. If you look at (a) which is clear, but also at (b) the basis for making block grants or granting subsidies. At least members of that august body, the chairman and may be some members must be persons who are conversant with how government finances are made and distributed.Mr. Chairman, we are familiar with constitutional principle that when it comes to budgeting it is the executive which proposes. Infact under our present system for example, Parliament which looked at government finances may reduce but it cannot increase what government has proposed. The idea being that it is the executive which is knowledgeable about what finances are available and what the state can afford. Therefore, the marriage between the Presidential knowledge about how finances should be run and local governments about what they want is very,very important. This commission should not be confused with local government association which Honourable Bidandi Ssali has referred to. The association certainly is there to demand and to solicit for funds at their level best from government and elsewhere. But this body the other job we have given it is to arbitrate between obviously the ministry of finance and local authorities as to whether they are being cheated or distribution is being fair. Therefore, it cannot be one sided. We have given it four members who represent the government, those are a majority on the committee.It is only the chairman, the vice chairman and one member who may necessarily be presumably on the other side, but it does not follow. The President may appoint these who are also favourable to local government. So I believe that first of all the principle that the executive must appoint in these cases should be acknowledged that there is no way we can go away from that. Secondly, we must see that this commission is a marriage between one side of government,central government and local government. However, we have in our wisdom through debates said, that local governments should be in a majority on this committee than the government. And indeed, if you removed Chairman they have a very big majority

on this Committee. So believe, Mr. Chairman, that this formulation is to take care of all the worries and arguments that we have had on the Floor. I beg to move, Mr. Chairman.

MR. MALINGA: Mr. Chairman and Honourable delegates, the formulation in this report of committee 4 does not decide as to who appoints these members. We have said that this should be left to Parliament to provide as to who appoints along with other thing to be provided about this commission. All we are seeking to do in this provision is to say that, there shall be a local government finance commission whose duties shall be as specified in those other programmes. We should leave Parliament to decide who will appoint. Those arguments which Honourable Kanyeihamba is advancing, should be advanced to formally provide for all these other things concerning commission are tabled in Parliament. Now it would be better to adopt the report of the commission since we have agreed as committee 4. Since we agreed on the principle of forming a local government service commission. The only principle we are asking to say here that members of the local government should have a majority on that committee. If they are five members what we are saying is, then at least three should come from the local government. If they are seven then at least four should come from local government authority. Otherwise, it will be up to the wisdom of Parliament to decide, it may start off with three members or may increase to 9 or 11 or whatever as the circumstances. So I would rather that we leave the composition to be dealt with by Parliament. All those arrangements put by Honourable Kanyeihamba will be taken care of by the Parliamentary provision, and we just be able to advance if we accepted the principles, Thank you.

MR. BASALIZA: Thank you very much, Mr. Chairman. Mr. Chairman, I have listened to Honourable Kanyeihamba's Motion with much interest, it is a good one. But, Mr. Chairman, this sort of amendment drags us into many things. What we have to do, we have to set up a commission as it should be. We have to spell out for instance, Mr. Chairman, how many years these commissioners are supposed to remain in office,and so forth and so on. That is why, Mr. Chairman personally I would like to buy the idea of the committee and go on and amend Article 218 (1). State in the following manner. *"There shall be a local government finance commission whose composition and appointment shall be determined by Parliament."* So that we leave the rest to Parliament Mr. Chairman.

MR. LEANDER KOMAKECH (Aruu County): Mr. Chairman I rise to second a Motion as moved by Honourable Basaliza. Because the problem we are going to run into here is completely unnecessary. This Motion would achieve the aim of establishing the commission that we are sure should be there to do two things. Just to arbitrate and to advise. The terms of service and the responsibility will be spelt out in detail by Parliament. I beg to support.

MR. MULENGA: Mr. Chairman, I do not know why this is now coming up after so much time taken on formulation whether it is fatigue that we should now go back to saying that the composition shall be determined by Parliament. We had gone this far, it can be composed of seven persons I have not heard anyone suggesting that it should more or less. So that is agreed here, if it is agreed, we can insert it. Secondly we have agreed, it was consensus that four of the seven would be nominees or appointees of local government which means the other three would be of appointees of government. That also is agreed here and it can be inserted. What seemed to bring problems is the formulation by Honourable Kanyeihamba that the chairman and deputy chairman shall be from the appointees of the President. Because there was another view,and it is wrong view that they should be appointed by or elected the members of the commission itself. Now I think if we went step by step, clause by clause, like you had done, the first Clause would be: *"There shall be a local government finance commission which shall consist of 7 persons,"* we settle that. Then could say Clause (2): *"Of the seven persons referred to in Clause (1) of this article, (a) three shall be appointed by the President, and (b), four shall be appointed by the local government."* Then we come to: *"(c), the members of the commission shall elect from among themselves a chairman and a vice chairman."* We can debate that.

THE CHAIRMAN: I think really we have spent a lot of time on this. Let us vote on that, we accept that or we do not.

MR. BIDANDI SSALI: Mr. Chairman, I am quite happy with the whole thing except, I would like to question members whether it is in the interest of local government, towards whom we have given

this commission, that the chairman of that commission should be appointed by the president? If we expect the president to take seriously the advise by the local finance commission. This is my reason at least the chairman, the committee the seven can appoint a vice chairman but at least the chairman, in my own view should be by the President for that reason I have given.

MR. DICK NYAI (Ayivu County): Mr. Chairman, I was just begging with Honourable G. Kanyeihamba whether it would not be in order to substitute the word 'Members' instead of 'persons.' Because 'persons' does not sound very respectable.

THE CHAIRMAN: No, no, the rest we shall sort out the drafting room. But the question which is really important is the appointment of the chairman. It is suggested that the President should appoint the chairman. But there is a view that he should not. Honourable Bidandi Ssali is saying that if this person has the blessing of the Presidential appointment, his appointment with the President to advise him may come faster.

MR. KIRUNDA KIVEJINJA (Bugweri County): Mr. Chairman, we are setting a new system in the country whereby people in office have to execute what they are supposed to do and not only to dispense with personal liking. Once you are a President it is your duty to do certain things, and you do it whether you hate me or do not want me so long as I am here, you have to deal with me. I expect you to do what is supposed to be done to me and we should continue like that so that we do away with the favours in public office.

THE CHAIRMAN: Okay, let me put the question on the formulation as read out by Honourable Mulenga. I put the question.

(Question put and agreed to)

THE CHAIRMAN: Honourable delegates, before we go to the functions, there is a need to put in a provision. We have now set up a body it talks about its composition and it Presidency. We have to state these because there are other things which we do not want to put in a constitution. But we can say Parliament shall prescribe the terms and conditions of service of the members of the commission as well as other matters. Because we are now looking at provision of secretarial services and financing. So you just say Parliament shall make provisions.

PROF. KANYEIHAMBA: Mr. Chairman, I move that in relation to all the other matters, we adopt the formulation proposed by the chairman that Parliament shall so provide functions of the commission.

THE CHAIRMAN: So Parliament shall prescribe the terms and conditions of service of the Members of the Commission and all other matters necessary for the proper functioning of the commission.

PROF. KANYEIHAMBA: Yes, Mr. Chairman.

THE CHAIRMAN: I now put the question.

(Question put and agreed to)

THE CHAIRMAN: We cannot go into the details into this document here to all those. Now the functions, I do not see any serious objection from the Floor on them so far. But my question would be, if you look at (2) do you want to say the local government finance nominees shall advise the President on or shall make recommendations to the President on. I am saying this because of course, we have passed those other provisions. But it says that the President will go to Parliament to ask for money to finance local government. But the President what is being done here is to say that before the President goes to Parliament he should be advised as to how much is required for the forth coming financial year. Now should they be making a recommendation or should they just be advising?

MR. OBUA OTOA (Erute North): Mr. Chairman, I want to address the question of functions. Because I see a problem arising. This morning we decided that we are going to have a committee to advise us on the formula for financing local governments, and their recommendations will be constitutional. Now I can see that if the role of this commission is only going to be advisory or only going to be to recommend certain things, I can see a problem. If they were to make recommendations about something which is not in keeping with the formula, we have already agreed upon what happens then. I would therefore, like to suggest that may be there is a way of tying the role of this commission to the implementation of whatever

function or whatever formula rather will have been agreed upon and provided. Otherwise, if we do not tie the role of the commission to the implementation of that particular formula.I can envisage a situation where the commission might operate in contravention of a constitutional provision regarding this formula for disbursing funds to the districts. So there is a problem there in trying to find a way of making sure that scenario does not occur. We must think very carefully about what role we are assigning to this commission if we do not want a conflict to arise. If the President wants advice with regard to this formula surely he can have advice from the Minister of Local Government or from whatever source from the Minister of Finance. Unless we give this particular role of advising the President in the implementation of this formula then I see them operating outside what might have already been constitutionally provided for. Even if you talk about their role in arbitrating I see it as being rather difficult, Mr. Chairman. I wonder whether you see the problem I am trying to address, Mr. Chairman.

THE CHAIRMAN: Yes, I think let me repeat it so that we see whether our minds are meeting. I can understand the concern you are raising that while we referred this morning some matters to the Kaberuka's committee to formulate some kind of formula, that formula might impact on the wording of 2(a) and 2(b). I have here some of the things some of us were mixed up with writing in Papua New Guinea, we found that we had to take a number of years. We were writing in 1980 but we went back to 1976 and then from 1976 we worked out a figure and that figure became the base figure. That figure is adjusted every financial year in accordance with the formula and it is called the Adjusted Base Figure. Now, in relation to a transferred activity. Then we said the Adjusted Base Figure for a transferred activity in relation to a year of grant. You must look at a particular year means that is the Adjusted Base Figure calculated for that year in accordance with the formula and you adjust a figure every year either taking into account inflation and other things in relation to G.D.P. and what not. Then we set up a formula for calculating that. Now, this commission,its job will be to say that okay the amount of money for this transferred activity this year was this. Taking into account all these factors what should be the figure in relation to that transferred activity for the next coming financial year. So it is not a redundant body as some people have been thinking. The formula to evolve could actually impact on the wording of (b) and (c). I would suggest therefore that we stand over (2) and refer it to the Kaberuka Committee so that they tie up both the formula and the functions of the commission in relation to calculating whatever formula it will be, that will be determining the amounts from year to year in relation to each transferred activity. Taking into account inflation and other factors.If that is agreeable then we shall refer it and we go to other matters. Honourable Musumba are you worried because you are a member of the committee?

MR.MUSUMBA: Thank you very much, Mr. Chairman. Mr. Chairman, I have been trying to catch your eye because this commission is emphatically a finance commission. It is responsible, if you read what is in 2, what you have wisely referred to the Kaberuka commission, it is about sharing what has been collected. However, Mr. Chairman, I do not know whether this Assembly should not also assign the Kaberuka committee to examine what role this committee can play from the fiscal side as well. Take, for instance, Mr. Chairman, I can foresee a situation where there will be need to examine various rates of tax applied to the provision we passed, was it 215? To ensure that there is no imbalance, vertical or otherwise, created by various districts having rates which are far apart. Secondly, the same commission also would generate some thinking on what, for instance, should be levied. What rates should be levied on what item so that this generation can then be presented to Parliament which would then legislate. I think there is need for a fiscal arrangement as well. If the Assembly goes with that I would want to go further and propose that we call this "The Fiscal and Finance Commission.

THE CHAIRMAN: You see I had myself avoided complicating the matters because I did not have any reasons why the committee only looked at the financial thing. Again I may bore you with the Papua New Guinea example because we had just a similar situation of decentralisation they have a whole ministry of decentralisation. In theirs it goes into both. You talk about allocation of minimum unconditional grants those moneys paid to the budget of a province or a district, here we call it district. The other one is also the role of that commission to look into and make recommendations to Parliament concerning any alleged discrimination or unreasonableness in provincial taxa-

tion. They were looking at a situation where some of the provinces may impose some of the taxes which are discriminatory against people and against other provincial government. If you take Kampala City Council may impose a tax which discriminates against Mpigi or prejudices the situation in Mpigi. Or the unreasonableness of the tax or the items that should be taxed so that it is brought to the attention of Parliament. Then corrective action can be taken by those concerned but I do not want to widen the subject. If you so wish may be they could so look at it through the Kaberuka committee and come back with a recommendation. If agreed then we make a reference on the functions of the commission and two, whether it should play a role in the fiscal area. That means that let refer the whole of Clause 2, Clause 3 and Clause 4 - well 5 is a question of protection but that one we shall see also when we come back. Shall we do 219?

MR. KATENTA APUULI: I thank you, Mr. Chairman. Mr. Chairman, the original Article 216 is now 219. The committee recommends that Article 216 be slightly amended to read *"Subject to the provisions of this Constitution and with the approval of Government, a Local Government may, for carrying out of its functions and services borrow money or accept and use any grant or assistance as Parliament shall prescribe."* Mr. Chairman, I beg to move.

THE CHAIRMAN: Agreed. Let me put the question that Article 219 do stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Article 220, Honourable Katenta Apuuli.

MR. KATENTA APUULI: Mr. Chairman, Article 220, the committee recommends that a new Article 220 be introduced to stand part of this Constitution and to read: *"Clause 1 - Parliament shall make laws requiring each local government to draw up a comprehensive list of all its internal revenue sources and to maintain data on total potential collectable revenues; (b) prescribing financial control and accountability measures for compliance by all local governments and (c) imposing regular audit requirement and procedures for local governments."* Mr. Chairman, I beg to move.

THE CHAIRMAN: Agreed. Next.

MR. KATENTA APUULI: Clause 2. *"District Councils shall prepare comprehensive and integrated development plans incorporating the plans of lower level local governments for submission to the National Planning Authority."* Mr. Chairman, I beg to move.

THE CHAIRMAN: Did we say National Planning Authority? or was Commission?

MR. KATENTA APUULI: Well, it was Authority by that time so it can be commission now.

THE CHAIRMAN: Okay. Now, let me put the question that Article 220 do stand part of the Draft Constitution.

(Question put and agreed to)

Article 221:

MR. KATENTA APUULI: Article 221, the Committee recommends that Article 217 as it is in the Draft Constitution stand part of the Constitution with minor amendments to read: *"The functions of a district government shall be exercised in accordance with this Constitution and any other law consistent with this Constitution but the exercise of those functions shall not detract from the order, peace and good governance of any part of Uganda."* Mr. Chairman, I beg to move.

MR. BEN WACHA: Mr. Chairman, Sir, I do not see the relevance of the words 'consistent with this Constitution.' Once you have already provided that the administration of the district has to be in accordance with the Constitution, it is implied that all the other laws which are going to be provided should be relevant to the Constitution. Any other law which is not is by that very nature contravening to the Constitution and should, therefore, be null and void.

MR. KATENTA APUULI: I concede that Honourable Chairman.

THE CHAIRMAN: In any case if you look at the provision we passed under Chapter One which clearly says that any other laws of whatever nature other than the Constitution itself that are inconsistent with it, they shall to the extent of that inconsist-

ency be null and avoid. So we do not have to re-state some of these things. I shall ask the Technical Committee to edit accordingly.

MR. DICK NYAI: Thank you, Mr. Chairman. I have only a slight problem. The word 'but' I think is ill placed if we are going to start a sentence after following a semi colon. The 'but' would tend to indicate that in certain cases it is okay for government to do things which can detract from order, peace and good governance of any part of Uganda. The 'but' even if deleted would in fact improve the construction than giving weird feeling that occasionally that we are allowed to do things which are wrong. So that I would propose, Mr. Chairman, that after the semi colon we delete the 'but' and say: *'In the exercise of those functions the district governments shall not detract from the order, peace and good governance of any part of Uganda.'* I beg to move.

THE CHAIRMAN: I think that is a question of language, I can again ask the Technical Committee to take the benefit of describal skills of Honourable Member for Ayivu to polish up this one without asking us debating it.

DR. KANYEIHAMBA: Thank you, Mr. Chairman. May be I am misunderstood I thought the whole thrust of Honourable Ben Wacha's was that this clause was not necessary. I would have agreed with him but if there is any doubt I want to formally move that this Clause be deleted because it is already covered for, it is not necessary.

THE CHAIRMAN: Where is it covered?

DR. KANYEIHAMBA: Mr. Chairman, the whole argument and your reading Article 1 was that any law or any function which is inconsistent with this Constitution would be void at any rate to the extent of inconsistency. Therefore Clause 221 as formulated here is no longer necessary, it will be a repeat of that clause.

THE CHAIRMAN: This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. That is the statement in the Constitution. I think we adopted it. Then it says it any other law or any custom inconsistent with any provision of this Constitution, the Constitution shall prevail and the other law or custom shall to the extent of the consistency be void.

DR. KANYEIHAMBA: Mr. Chairman, the point I was raising it is not necessary to say that the functions of a district government shall be exercised in accordance with this Constitution or any other law. That is really what the Constitution already says. One assumes that anybody or any one exercising powers of government would do so in accordance with this Constitution and we do not need to reiterate here.

MR. KATENTA APUULI: Thank you, Mr. Chairman. I would like to make an appeal. I know that it might be repetitive because there have been occasions in the drafting of this Constitution where we have had to repeat things. I would like to attract the attention of Honourable Delegates that this provision is made under the heading: "Relationship between the districts and the Central Government." There should be no ambiguity about that relationship. That is why I think this kind of repetitiveness might be appropriate.

MR. KARUHANGA ELLY (Nyabushozi County): Mr. Chairman, I wanted to support my chairman that the reason why we put it in here is the relationship between one district and another. The intention is that whatever they do they must not detract from the good order, peace and good governance of any other part of Uganda. The decisions of my brothers in Kasese although they may be popular and passed in the district should not bring problems to the people of Bunyaruguru in Bushenyi. So this is what we are trying to introduce and whether it is repetitive or not it is important that we establish that whatever they are doing is in relation to the neighbours and to the other parts of the country.

THE CHAIRMAN: Are you saying that at no time should Mr. Karuhanga, the Chairman of Mbarara declare war on the district of Kasese on behalf of the people of Mbarara?

MR. KARUHANGA: Yes. And we want to find a provision in the Constitution to stop me or to discourage me from ever thinking about going to the mountains.

THE CHAIRMAN: Let us leave it there, we can always come back to it during the reconsideration stage. I put the question on 221 that stand part of the Constitution.

(Question put and agreed to)

THE CHAIRMAN: I think let us stop there, Article 222 is likely to raise a bit of argument, especially in view of the Chairman's invitation. Before we adjourn let me say that I have been requested and this one is for speeding our work by the Chairman of Committee Two to give them a morning for deliberation purposes. They want to sit as quickly as possible to see how they put together their final views on the Chapter on the Judiciary and so I would like to adjourn so that we resume on Monday afternoon but before we adjourn now can I give the Floor to Honourable Mulenga.

MR. MULENGA: Thank you, Mr. Chairman. With your permission I am requesting Members of Select Committee Two that we meet on Monday at 9.00 O'clock to consider the final report on Judiciary as well as some matters that were referred back by the plenary for our consideration in Chapter Seven and Eight.

THE CHAIRMAN: I would also like to give the Floor to Honourable Kaberuka.

DR. KABERUKA: Thank you, Mr. Chairman. In view of the fact that on Monday the plenary will not take place, Monday morning, I wish to invite Members of Business Sub Committee to meet at 10.00 O'clock.

THE CHAIRMAN: I thought we were going to also take advantage of that to cause other committees also to meet but may be you have other time. Honourable Katenta Apuuli-

MR. KATENTA APUULI: In the same breath, Mr. Chairman, we very much appreciate that indulgence. I would like to also request Members of Select Committee Four also to meet and iron out what few things that we have been assigned in particular Article 210 Clause 3 and 4. I would like too in that meeting to kindly request Honourable Byakika, Honourable Ndege, Honourable Kanyeihamba, Honourable Rwabyomere, Honourable Mulenga I think cannot be available.But Honourable Kalema should be there to help us to finalise this matter and any other matter that is outstanding in the committee. I thank you, Mr. Chairman.

DR. KABERUKA: Mr. Chairman, after consultation with Members of my other committee, I wish to also announce that we should be meeting at 11.00 O'clock and we shall meet may be here.

THE CHAIRMAN: Are you saying that the sub committee of the Business Committee meets at 10.00 O'clock and the Committee on the Formula to the Distribution of Revenue between Districts and the Central Government meets at 11.00 O'clock?

DR. KABERUKA: Yes, please.

THE CHAIRMAN: So we shall have the following committee meetings, Committee Two of Chairman, Honourable Mulenga, Committee Four of Honourable Katenta Apuuli, the two committees of Honourable Kaberuka, namely, the Business Sub Committee and also of the Committee on Revenue, on grants and other fiscal matters. Honourable Delegates, with that let me adjourn until 2.30 p.m. on Monday afternoon but meanwhile we shall see you in another thirty or so minutes elsewhere. We stand adjourned, thank you very much.

(The Assembly rose and adjourned until Monday 10th April 1995 at 2.30 p.m)

THE REPUBLIC OF UGANDA

PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

MONDAY, 10TH APRIL 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3938]

Monday, 10th April, 1995.

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

PRAYERS.

(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

CHAPTER 13 - LOCAL GOVERNMENT.

Article 218: Delegation of functions and Services to District Council.

MR. MASALU MUSENE (Manjia County) Thank you very much, Madam Chairman. Committee 4 recommends that former Article 218 be deleted. This article was about delegation of functions and services to the District Council. The committee recommends its deletion because this has now been covered by Article 214 clause 2, already passed by this Constituent Assembly.

(Question put and agreed to)

THE CHAIRMAN: Now we go to 219.

MR. MASALU MUSENE: Mr. Chairman, former article 219 which deals with the administration of districts by the President was considered at length by the committee and the committee in the end recommended that Article 219 as it is in the Draft Constitution should stand part of the Draft Constitution to read - clause 1 which is new article 222, page 31 of the report: *"The President may, with the approval of Parliament, take over the administration of any district in any of the following circumstances:*
(a) where the District Council so requests and it is in the public interest to do so.
(b) where a state of emergency has been declared in that district or any other parts of Uganda or in Uganda generally, and
(c) if circumstances have arisen which make it impossible or extremely difficult for the district government to function." Mr. Chairman, I beg to move.

THE CHAIRMAN: Yes, but just a moment. We are taking Clause 1, and we shall go down the paragraphs - but hon. Kitariko you want to be clarified?

MR. KITARIKO: Thank you, Mr. Chairman. I have read this article, and I believe I am not convinced that this really is good enough to convince us for the centre to take over our power in the districts. For example, in what circumstances would the council request the centre to take over power of the district? These should have been enumerated and reasonably argued. When you say a state of emergency has emerged, if the council is not there, how will the centre itself administer the district? Mr. Chairman, and (c) looks like number (a) in this clause, what would these *circumstances* be? We cannot leave it just open and the centre takes over power as it may feel like! So, I would like the Chairman to give me more reason why he thinks these (a) (b) (c) conditions should reign in the district and the centre takes over power in the districts and administers when the council itself is unable to do so. Will it be done by the Police, by the Army; who will be administering? Is it the CGR who will be in charge, and how will he manage himself in the absence of the district council?

MR. MASALU MUSENE: Mr. Chairman, the committee in recommending that this article stands without any Amendment, found that it was well formulated. It is well formulated in that, for example, when we talk of a state of emergency, we have already covered state of emergency when dealing with the human rights chapter, and the reasons leading to declaration of any state of emergency in any area or any part of Uganda are clearly laid down in that chapter which is already covered. Secondly, there may be reasons which the district council - because power has now been decentralised, much power is at the district level in the hands of the Chairman and the district council - so, where the government of the district feels that it is in public interest for the centre to take over, then it will depend on the particular circumstances. For example, we may have, say a district of Kalangala, sometime back there was a view that the district of Kalangala was having financial problems which was a bit temporary in nature. So even in such circumstances they can request that the

centre takes over for sometime while the things are being settled out. So, the reasons may not be uniform so as to be constitutionalised, but it will depend on circumstances which vary from place to place. I do not know whether that satisfies Members.

MR. KIWAGAMA (Bunya West): Thank you very much, Mr. Chairman. It is true I am a Member of Committee Four and the Chairman will excuse me if we already discussed this, but I do not remember what we decided. Under this Article 222, we are empowering the President to take over the administration of a district. But in Clause 1 of Article 203, we have empowered districts to create councils to ask for funds for secretariats, what powers will the President have over these if they also find problems - say if a trust fund or a secretariat or a council under a cooperation of district failed to perform or is performing badly? Would the President have powers under this Article 222 to take over these secretariats or councils or trust funds? If the Chairman can remind me, I do not remember what we decided on this, and I feel that the President should have the same powers to take over these secretariats or councils if they are not performing properly for a given period of a similar period as a district, Mr. Chairman.

THE CHAIRMAN: I do not think we need to address that issue, but of course, if you pass this one, we would want to know whether it is not possible that, for instance, if there is a Trust Fund consisting of various districts to support a particular function and because of mismanagement the President has to take over - whoever he will call upon to run the district for him - attend those meetings, and perform the functions of that district in relation to the Trust, so that for instance, if they have meetings of Council Chairmen, he could also go and attend them on behalf of the district. But anyway, this is all speculation, maybe, it could be sorted out.

MR. KARUHANGA (Nyabushozi): Thank you, Mr. Chairman. I just wanted to supplement the views expressed by Members of our committee as to why we felt that we should retain this in the Draft. Mainly the reasons I remember are two; one is if there is a political impasse and the district cannot move anymore, and there is no movement forward or backward and there is a temporary hold, matters in the district should continue and the central government should step in while they reorganise themselves. The other thing is, which permission? I am going to use the example of some of the districts in Uganda and with permission from the delegates from there. It does not mean it is going to happen there but if you take, for example, the case of - just as an example without meaning that it will happen - the case of Karamoja, if they cannot raise sufficient revenue, for example, to pay Civil Servants and to meet their obligations within the district, and at the same time there is, let us say problems of insecurity and people cannot collect taxes and the district is also having this situation, we felt that it is not good just to say, "we have made you independent for bad, for worse, do not ever think about us, God forbid, to hell with you!" We feel that the Committee should retain what the Odoki Draft came up with for the rainy day as it were. It is a kind of an insurance scheme for our country to continue. Thank you, Sir.

MR. ELYAU (Kalaki County): Thank you, Mr. Chairman. I can agree with (a) and (b), but I have a problem with (c). Mr. Chairman, it is very difficult to identify how districts have failed, I thought the committee should have come out clearly whether it means financially or politically because (c) was not necessary. For example, why do you say that if circumstance have arisen which will make it impossible or extremely difficult for district governance to function? Supposing we go for parties and then the party in power lost election in a particular district, would that mean that because somebody has opposed there, therefore, the President should come in? I want this to be clarified because I am afraid if things remain, it causes a lot of doubt. I have never seen a local government failing anywhere unless maybe for example like in our case now, Teso could fail maybe because there are no animals, but I have never seen at one time a government failing. So, I thought I would ask for clarification from the Chairman -*(Interruption)*.

THE CHAIRMAN: Are you giving an example of failure; are you trying to answer yourself that Teso has failed because of lack of cattle?

MR. ELYAU: In case of revenue anyway, but at least, this one would mean politically when somebody cannot function now - when there are conflicts. Can the Chairman clarify really what do they mean, is it political or financial?

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MR. ELYAU: In case of revenue anyway, but at least, this one would mean politically when somebody cannot function now - when there are conflicts. Can the Chairman clarify really what do they mean, is it political or financial?

MR. WACHA (Oyam County North): Thank you, Sir. Mine is very small, Mr. Chairman. I just want the Chairman of the committee to enlighten me. During the period when the President is taking over the administration of the district, what is the role of the established organs of the districts? Does it mean that when the President takes over the administration of the district, the various organisation which are established by the Constitution in the district are automatically dissolved, or they still stay? Now if they stay, what role do they play; will their roles not conflict with those of the administrator of the district?

THE CHAIRMAN: I hope the Deputy Chairman is taking note so that he answers them and we proceed.

DR. MUGYENYI (Isingiro North): Thank you, Mr. Chairman. I just want to add on the voice of members of Committee Four. What we had in mind when we were recommending this article to remain in our Draft Constitution, we had in mind cases of an administrative crisis, a situation whereby for instance, all members of the district Executive Committee could resign, and there is a breakdown of the administration in the district, and we felt that the Central Government, in this case the President, should come in and maintain law and order, and make sure that administrative functions are put back to track in the district. We also had in mind on the other extreme a situation where you can have an epidemic in the district; some of the epidemics are fast killing like plague which can kill in hours and a good number of members of the District Administration are affected and the district really cannot function, we felt there was a need for the President to come in and administer the district. Definitely, this period is not for ever, if you go to Clause (3), you will find that we are recommending that it should not exceed 90 days.

So, this really, Hon. Delegates, was put in place to cater for any adverse circumstances where there may be breakdown of administration in the district, and as Hon. Karuhanga has said there is complete paralysis. So, we thought the President should come in, if need be - say the whole executive has resigned, to make sure that there is a new executive in place and then the district can come back to track. If say there is an epidemic then definitely the state of emergency will have to be declared, in which case the President takes over the administration of the district and then when things are sorted out, the district administration can take off again. I will not have the ability to answer the query of Hon. Ben Wacha, I think I will leave that one to the Chairman. I thank you, Mr. Chairman.

MAJ. GEN. TINYEFUZA: Point of clarification! Thank you, Hon. Chairman. Mr. Chairman, I would like to seek some clarification from the Chairman of the Committee whether they did consider that - you know - especially, (a) and (c) could be abused by the powers that be! Because I do not envisage a situation after decentralising power to the district, now saying the same district is going to request the centre to come back and take it over. We are now clamouring, saying that you give us the power and we are now thinking about a situation when the district is going to say take me back and I do not know what politics it would mean here. I do not know whether they did address that point that, for instance, in election years - because it could even have monetary effects on it - that if a district is taken over, it could be manipulated politically. I do not know whether they did consider this.

Secondly, what impact would it have on districts which merge to forge a cooperate body like what has been put across here, that the districts which so wish could come together under a charter and deposit it with the Speaker. Does it mean the President can now come and take over one of these districts, when the district requests - when it has already concluded the charter and it has been deposited with the Speaker? Therefore, I am seeing here some conflict and that is why I would rather myself support keeping (b), because (b) is a legitimate reason why a President should come in and take over a district to preserve peace of this country but all other matters I consider they may be a little bit fluid and political, and could be abused from time to time. So, I would like those clarifications, Mr. Chairman. Thank you very much.

MR. OBUA OTUA: Thank you, Mr. Chairman. Mine is a very small clarification on (b) where it says: "*where a state of emergency has been declared in that district*" - that is alright, and then it goes on: "*or any other part of Uganda* or in

Uganda generally." I want to understand why if a state of emergency has been declared in any other part of Uganda, the President should take over another district? For instance, if a state of emergency has been declared in Karamoja let us say, why should the President take over Lango or Arua?

THE CHAIRMAN: I think the best example would be if it is declared in Karamoja and he took over Kalangala.

MR. OBUA ATUA: Yes, exactly, that is the kind of situation I am trying to get clarified on, Mr. Chairman. I do not understand that one. So, I would like an explanation from the Chairman of the committee with regard to that formulation, Mr. Chairman, thank you.

DR.HIGIRO SEMAJEGE (Lwemiyaga): Thank you, Mr. Chairman. Questions have been asked about (b) and (c), but I am asking about (a) and some of the advanced reasons where that a district might have found it hard to produce enough revenue to run its services but even this one, Mr. Chairman, I thought that once such a case arises, the best way to save it would be for the central government to find some finances to grant to this district which temporarily has problems, rather than district saying, we have been autonomous but now please take us because we cannot afford finances. I thought the best recourse would be to request for funds as we normally even do for the whole country, we go to World Bank, we go to IMF that please help us we do not have money. We do not say we have failed come and rule us. So, I think, Mr. Chairman, the committee should tell us why they came with that decision. I think once we give these districts autonomy they should be able to come up, and we should only support them not just to withdraw. I thank you very much.

MR. NEKYON (Maruzi County): Mr. Chairman, this provision is not being brought out of the blue, it is found in the Indian Constitution where it provides, when there is a crisis which is beyond the control of a state, the President takes over the administration of that state, and there what happens is that the governor who is above the Chief Minister becomes the administrator working for the President. But the provision makes it clear that the time limit is not such that it becomes a perpetual rule by the Central Government. We here also have had instances in Acholi and Bukedi where crises developed over crisis because of power struggle within the district in the '60s and it became impossible to have a party government in power in those districts, and it was sorted out in a similar way. But let me say that even in India where everybody tries to abide by the Constitution, unlike Uganda, you find that there has been incidences where the other Parties apart from the Congress which has been ruling in Delhi have complained that this provision has been used to push out, for instance, communist government in Kerela because the same governments do things in such a way - give grants in such a way as to make it inadequate, and then stir up trouble in the same state. So, they had demonstrations week after week, and then the Prime Minister said, Mr. President the country there cannot work, we want you to take over and he takes over.

So, what is being brought forward as a possibility has actually been seen on the ground in India. The question of saying that you have a security situation in an area where it becomes impossible for the local government to run, does not make sense. Because one, you have given the power of keeping law and order to the central government, then power does not change with the situation. Even when you have to control the people in that area, the responsibility still remains with the central government. So, it does not involve the local government, you cannot blame the local government for the collapse of the security. For instance, the Karamojong are now allowed to own guns and walk with them freely and you cannot say now there is a state of emergency there and let us take over the local government. In fact, if there is a way the best person to run the services would be the local government because if there is trouble, the central government is already engaged in war efforts. If you say the same government will now run the local government activity, apart from running the war effort, then you are just defeating the purpose and the issue which has been raised by the Hon. Obua Otua is very genuine.

You cannot just say emergency has been declared in a district here and then you involve every other district. That is a gross mismanagement of society and then you talk of public

interest, public interest may come in form of finances, but we know Uganda itself is semi-bankrupt. So, if the central government is bankrupt, how can you take over the district government and prevent it from being bankrupt? In other words you are saying anybody who runs out of finances must be taken over. So, the central government should also be taken over by the local government. This, therefore, does not in our opinion provide a ground for taking over, what we are trying to provide is that the central government will be looking at the interest of the local government, but where there is a crisis, financial or administrative, the collective responsibility is for the whole country to see that that district stands on its foot again. So therefore, the problem is how to raise additional finances from the centre and pump it in that district and then send there some supervisors to make sure that the money is properly spent during that time. This is what we did with cooperative societies in the '60s when they were collapsing. We just appointed Secretary Managers to supervise the unions and many of them recovered, some of course, did not recover as usual. So, I am not sure about this provision, I think, the Chairman has to look again to what they are trying to provide, instead of trying to force us to put in the Constitution things which will create instability tomorrow.

CAPT. BABU (Kampala Central): Thank you very much, Mr. Chairman. I would like to thank Hon. Nekyon that after a long time, today his delivery has been above average, and I think it is just fair -*(Interruption)*.

THE CHAIRMAN: I do not think we have appointed you to mark others. *(Laughter)*

CAPT. BABU: Well, I want to thank him for his delivery, Mr. Chairman, except the little bit about bankruptcy which I did not agree with, but there it is, we can never be a hundred per cent sure. Now, Mr. Chairman, I wanted to bring the example of the American States, and recently, vividly we can remember when there were floods in several states on the Mississippi and these floods were beyond the capacity of the states, and the central government of United States, the Federal Government had to come in and declare this an area of emergency and the President of the United States had to take over. I agree entirely there must be a time limit but this is the kind of situation that one must, therefore, fathom when one is talking about this particular article we are debating about. Secondly, there are areas like in Australia where they have had several problems, one of them being the Northern States which for many, many years had problems with rainfall and the central government had to come in. India is the other example. In our case here, even in recent times, the central government had to come in to help certain district councils which had reached an impasse, and the district administrator had to come in and allow these people to have new elections. There were counter accusations and the District Council came to a total standstill.

So, one cannot say that this will not happen and I think we must, therefore, when we were talking, especially about finances a few minutes ago about the NRC and the future Parliament - maybe the country is semi bankrupt now, but in the future, I expect it not to be, especially, when all those hon. Members who will make sure that it is not bankrupt are in power, because we are not passing a Constitution for this particular era, we are passing it for posterity, and by then our finances will be healthier and the central government will be by law sending money to these districts, and therefore, if there is misuse of these funds there should be some sort of veto power in these districts to make sure that the public interest is protected, and I think this is where this comes in. So, when we are debating, we must not debate for now, we are just building capacity. The other day our Budget was so small, we did not even have enough money to put in, it has been growing, our revenue has been growing, the money going to the district has also been growing. So, you cannot sit here and pretend that in the next ten years our country will not get out of these doldrums and will be able to finance these budgets and, therefore, require accountability. It therefore becomes very important that they should be, and somebody should know that there is a stick somewhere that if they do misuse public funds, the stick will come on them. I do not disagree at all, that today we have problems here and these problems will take sometime to go away, but we are not making a Constitution for this particular problem now, we are making a Constitution to ensure that these problems go away in the future and, therefore, we must push this clause.

I agree entirely that there is one here which sounds rather a bit of a problem, and I think it is (c). I do not know what those might be, once you have defined the first two then (c) does not seem to have any basis. Apart from that I would like them to combine this technically so that they can give us something much more serious that we can work on. Apart from that, Mr. Chairman, I would like to support this Amendment without (c). Thank you.

MR. ODUR (Dokolo County): Thank you very much, Mr. Chairman. Now there is a simple clarification from the Chairman of the committee regarding (a), where the district councils so request and it is in the public interest to do so. Now decisions of the council are usually arrived at through resolutions supported by a certain majority. Now, I wonder in this case - I want the Chairman to clarify, would this decision to take over the district by the President, would it be a unanimous decision, majority decision, what is the kind of percentage attached to this, and why was it not called necessary that this should be provided for? Thank you, Mr. Chairman.

MR. KAVUMA (Kyaddondo South): I thank you very much, Mr. Chairman. I support this recommendation from the committee. Mr. Chairman, I find the necessary approval by Parliament before a district is taken over a very effective safeguard against whatever worries we may have. Considering that we are writing a Constitution and not a simple Act of Parliament, I think it is difficult to itemize all these circumstances we may think about. They will not - it may not even be possible to cover all the situations we may want to talk about which may necessitate the central government taking over administration of local government. So, Mr. Chairman, I think as long as Parliament has an opportunity to think and debate the merits or demerits of taking over by the President, we should not have any fear. Mr. Chairman, an argument has also been advanced questioning those bodies which may cooperate under what we have already passed, and I think when we deliberated on this kind of cooperation, we did not give all the powers that are to be enjoyed or exercised by the district government to the cooperating body. So, the status of a government remained with the district, and if a district which is party to the cooperation arrangement finds it necessary for the sake of good governance and in the public interest to request the centre, I do not think it should be done by the mere fact that we allowed them to cooperate for culture and development. They should have their power, if they think there is something that requires to cause the assistance of the central government.

Mr. Chairman, a state of emergency being declared in Karamoja and you take over Kalangala, I think these are extremes really. This thing is not going to be unilateral, the problem will be brought to the national Parliament. So, we should not, I think, take these positions to extremes -*(Interruption).*

THE CHAIRMAN: No, but I think the point is, where you write in (b) that: "*where a state of emergency has been declared in that district or any other part of Uganda, or in Uganda generally.*" Now, what is the use of having "*or any other part of Uganda*"? Because also that one has been taken over by virtue of its own problems. Do you not think that clause should go so that what we are talking about has been declared in that district or in Uganda generally? I do not see the use of the other one, and that is why the example was given, of declaring in Kotido and taking over Kalangala.

MR. KAVUMA: Much obliged, Mr. Chairman. Maybe, it is a wrong example I picked on but really, what I thought was the overriding factor to be taken into account is the fact that before this power is exercised, the national Parliament is going to debate the merits and demerits of any such move. If it is found ridiculous, then the President will be humbly advised that please do act in that kind of manner. Mr. Chairman, (c), I think the committee might have had the idea of putting in a kind of residual clause just in case it becomes necessary for any matter that is not covered in (b) and (a) should we leave the situation unattended to. I think this is not harmful, it is intended to allow a situation not to develop into a threat to the nation by allowing the centre and the Parliament to consider whether it is necessary to assume the administration of local government. I thank you, Mr. Chairman.

MR. ABU MAYANJA (Busujju County): Thank you, Mr. Chairman. The gist of my contribution really is that I see decisions which

require more than one body, and the two bodies coming to different conclusions that might create a situation of some difficulty. So, in paragraph (a) it says: "*where the district council so requests...*" and then it says: "*and it is in the public interest to do so.*" Who requested? I do not know, obviously somebody might have asked, but who decides that it is in the public interest, if it is not the district itself? If the district makes a resolution that they think it should be taken over, and then somebody comes from outside and says oh, no, it is not in the public interest to do so, now where such a situation arises, the district council which has clearly indicated that it has become incapable of governing that district will be compelled to go on governing it with disastrous consequences. Maybe, there should be a provision that probably in such a situation there shall be an immediate election, but in any event a take over by the President might be unavoidable. But why do we think - what kind of situation do we envisage where the district says that they have become incapacitated, central government please come in? Today, somebody becomes a Judge or whatever and he says no, you have said that but we think it is not in the public interest, so you continue! These are situations which require two bodies to decide on the same thing and may sometimes result in absurd consequences.

Actually, I agree Mr. Chairman, that it would be better to talk of declaring an emergency in Uganda generally, because it seems to me (b) somewhat goes to the absurd to say that if there is an emergency in Ntungamo, then they take over Mubende District. If it is in Uganda generally, yes, they can then find out those which are not governable, but I cannot imagine where an emergency condition exist in district A and then you use that as a rationale or a justification for taking over the administration of district B. The matter to guard against in these situations from where we have known them, is this that in a situation where you have multiparty politics, you may have a situation where the central government is being manned by Party (a) and the district is being run by the opposition Party (b) and then you find that the government wants to use their power to come and frustrate the opposition, maybe, they are again in power - and this can bring about very unfortunate and unnecessary political friction. Therefore, the taking over of administration of districts by the central government is something which should not be done except really in dire circumstances.

The safeguard of Parliament you can see, Mr. Chairman, even here you can find that there are matters which some people consider extremely vital but somebody can ram them through by the use of a majority. So, if the government has got a majority in Parliament, that is not necessarily a safeguard against abuse of power and taking over a council which is democratically elected against the wishes of the people who are in that area. I thank you, Mr. Chairman.

MR. KASAJJA: Point of clarification! Thank you very much, Mr. Chairman. Mr. Chairman, mine is a clarification which I seek to get from the Chairman presenting this article. It is in relation to paragraph (c) which states that: "*If circumstances have arisen which make it impossible or extremely difficult for district governance to function.*" Mr. Chairman, I am seeing one problem here which negates, I think, the intention of the principle of decentralisation which we are trying to build up under lower governments, because we are taking the power from these lower governments, local councils, and they are going to have leaders who are going to be elected at periodical times. Now, these circumstances which are quoted here under (c), do not in my view take into account that if a leadership has been elected by the council or by the district, then it can be changed because it can also make that area difficult to rule. Mr. Chairman, this is not something out of the blue, we have been reading newspapers. We have been getting information about what happens in this country, some districts are having problems because of leadership, because of Central Government Representatives and so on. Now, you will find that if a leadership has been changed, maybe, sanity will prevail in that area. Now, can the Chairman of this committee tell me under this circumstance where we allow in or slot in this change of leadership which could come in to rectify the situation that the previous leadership could have cultivated? I think that one, I want a clarification before we can really allow, especially, this to take place.

MR. OKENY (Chua County): Thank you, Mr. Chairman. I rise to support the report of the committee subject to these Amendments which

I am trying to suggest. Mr. Chairman, I appreciate the fear of this House based on the previous experiences that we have gone through. You have heard Hon. Nekyon quoting the Acholi case as an instance whereby there has been a little bit of difficulties in running a district council. A district council was in the hands of the party in power at the centre, and the opposition which seems to be very strong in the district passed a vote of no confidence in the Chairman and the Secretary General and then elected the new ones but because the approval had to be made by the central minister here of local government, they had to have that approval and they had to cause the whole Local Administration Act to be amended throughout Uganda while the other parts of Uganda had not had any part in that deal, and I think this is the fear that is haunting this House.

I would submit that in sub-paragraph (1) where it says: "*The President may, with the approval of Parliament...*" I would like him to say there: "*two thirds of Parliament, to check the abuse of the majority by the party that be in government*" because they can use that simple majority to harass other districts who are in opposition to that government in the centre. Another instance, Mr. Chairman, we had in the '60s was the prolonged state of emergency in Buganda here. Each time after every six months, extend it, extend it! It had become Bataringaya's Act. Because if the government is interested in a certain thing, it will always try to work down a certain given district. We are aiming by this Constitution we are making - really this Constitution for the multi-parties, that they will come to form the government here at the centre and then in the parties you will have the majority - maybe by simple majority, and if they are at the centre here - Mr. Chairman, help me with all this rumouring here. I would like to make my case very clearly, if you need to speak you raise up your hand and speak, do not speak through me.

THE CHAIRMAN: Hon. Atwoma, please address whoever you address through the Chair.

MR. OKENY: Yes, Mr. Chairman, that is why I am calling for your protection, because the Member in front of me here is trying to disturb me.

THE CHAIRMAN: Please leave the Hon. Member alone.

MR. OKENY: Mr. Chairman, if I may continue. I suggest that by only simple majority, that is subject to abuse by the majority party that may be in government, but if you put there two thirds, then they will find it very difficult, if really they can realise two thirds, then it means there is still a case for the President to take over a district. I will submit this Amendment. And in (b) I would say to be safe and to allay this suspicion in the minds of the Members which even occurs in my mind, delete the words *"or in any other parts of Uganda"* and rather say: "*where the state of emergency has been declared in that district.*" If it is in that district, it may be understandable because there might be some causes - or in Uganda generally, that will be alright because there will be circumstances leading to them. But really, to say you have heard from other Members, to say a matter occurring in Nebbi and then taking over Kalangala and other things like this, this is really obviously very unbecoming, and the President can very easily - because we are going to have Party Presidents and we shall have opposition within the House in the centre here or within the districts and other districts will always be aimed at being worked down by the centre here because they did concur with the Party that leads.

So, Mr. Chairman, I would like, with these two Amendments, if the Chairman of the committee will accept, I would say I support the recommendation of the committee. Thank you.

BRIG. KYALIGONZA (Buhaguzi County): Mr. Chairman, I thank you very much. Mr. Chairman, I was only concerned about the feelings of the Hon. Members about this recommendation. All Members who have given their reservations either to support or oppose, they seem to imply that whatever recommendation was made is only answering the negative part of the situation. I am looking at our situation where even the President may take over the administration of the district through positive means, if for instance, the reasons are positive he could take over. For instance, Clause (a) if we talk of "*where the districts so request*", there is a situation where a district - for instance, the other day we had Kumi, there was famine, this famine can

be so extreme that they cannot cope up with the distribution of food in Kumi, and therefore, they could come to ask government to take over the administration of the distribution of food and so on! But when the Hon. Maj. General said that with this decentralisation aspect, how will a district turn around to say we want to be taken over, there can be a situation which can cause that district to become incapable of running its own affairs. For instance, if there could be famine in a place like Moroto during the dry seasons; there can be terrible fires, there can be fire and it burns down all the *Manyatas* and then they need the rescue of the central government to come and assist them, and take over the administration, that one can happen.

When it comes to a state of emergency being declared in that district or any other part of Uganda, Mr. Chairman, through you I want also to inform the Members that the emergencies are not always for war. There can be emergencies - for instance, if there is disease, there can be cholera; for instance, now we have even in my Constituency in Buhaguzi we are suspecting some outbreak of cholera through Nkondo which is bordering with Zaire. Now, if this one can spread, Hoima District could be declared under emergency, and then one of the patients could have gone into Kiboga and then there is also a detection of possible outbreak of cholera in Kiboga, so the President can simultaneously declare the state of emergency in Hoima and in any other part of Uganda if it is suspected that there is likelihood of having an outbreak of disease in that place, he can declare it, and then, of course, (c) this one goes with politics, as Hon. Members have been saying and my expert, veteran constitution maker, Hon. Kakyama - this one has had all the Constitutions and he has participated nearly in all of them, where you find for instance, there can be some disagreement between the rivaling Political Parties within that district and things can be made very difficult for the administration of the district and maybe when a vote of no-confidence is about to be passed, some Members may tactfully ask the government to take over and sometimes it can be difficult for administration of the district to carry on without the intervention of central government. So, I propose that in good faith that the recommendation be looked at in various scenarios which should happen both in peace time a turbulent periods. I thank you, Mr. Chairman.

THE CHAIRMAN: Okay, Hon. Masalu Musene could you respond to some of these, and I think one of the most important points is made by Hon. Ben Wacha, what does "to take over the administration" mean in relation to the existing institutions?

MR. MASALU MUSENE: Thank you, Mr. Chairman. Mr. Chairman, I think I will start with (b) where most of the Delegates have no problems with except they have a problem with the words: *"or in any other part."* What the Committee had in mind as far as (b) is concerned or that phrase: "*any other part of Uganda"* was for example that, a state of emergency in one district may affect a neighboring district. For example, if you have insurgency say in Kumi, you may find that it spreads to Soroti and so, the government having declared a state of emergency in Kumi, may take over Soroti, to avoid the spread of insurgency in Soroti. Or, another living example; in 1985, in this country, Delegates will remember that we had uncoordinated movements which started in Gulu, but may be if the government of the time had taken over Apac and Luweero, those movements would not have spread to Kampala, and eventually the government had to go. So, that is what the Committee had in mind. But then, I have consulted a number of Members and we would have no quarrel with removing the words; "*or any part of Uganda"* so that we have: "*where a state of emergency has been declared in that district, or in Uganda generally.*" I think this is what has been suggested by many including Hon. Abu Mayanja, Hon. Atwoma, so I think the Committee has no problem with that.

I will now turn to what has been voiced about (a) and (c). I do not need to repeat what other Delegates have stated, but the circumstances which would lead to a district council requesting to be taken over, or any other circumstances making it impossible include those already pointed out like famine by Hon. Kyaligonza. He also pointed out that we could have Cholera. For example he gave Buhaguzi but right now, even in Bundibugyo, we have Cholera and if it spreads, that could lead to circumstances making it difficult for the District of Bundibugyo to run. We may have things like, epidemics; like earthquakes and so forth like it happened in Kabarole. So all those could have implications and consequences which would make it difficult for the

District Administration to run the government and therefore, necessitating the Central Government to take over. May be, I will refer Members to the Odoki Commission Report on page 515 - 18170. Mr. Chairman, if I may read it. It provides as follows that: "*There may also be other circumstances which make it impossible or extremely difficult for Local Government to function. This may include wide spread corruption and abuse of office, gross financial mismanagement, break down in law and order, and activities which threaten National Unity or the Sovereignty of the Country.*" This is what has been outlined in the Odoki Commission as circumstances which may make it impossible. And as I said earlier, it is even difficult to enumerate all the circumstances. And responding to questions from Hon. Delegates who asked about time, if I may go on to read the Odoki Report, it says that: "*The aim should be to restore a Local Government as soon as the circumstances which make the take over necessary no longer obtained. It is important that during the period when the Central Government is in control, all steps are taken to restore the situation to normality in the shortest time possible.*" And I want to implore Members that, in Clause 3, which is ahead, on page 32, Members will read that: "*unless approved by Parliament for a longer term, the exercise by the president of a power under this Article shall be for a period not exceeding 90 days.*" So, this I hope covers the point raised by Hon. Adoko Nekyon, when he stated from the Indian experience that there is a time limit always given, it should not be left at large. So, the Committee tried to cater for this issue of time also.

May be to come to the point raised by Hon. Wacha about the administration and so forth, during this time if the circumstances persist, I thought this is covered by Clause 4 whereby it is provided *that where after the exercise by the President of his or her power under this Article, circumstances make it impossible for the District Government to resume administration of the District or the unexpired term of the Council exceeds 12 months, then elections of a new Council are to be held within 6 months after the president took over the administration of the district* so that if it is to say problems of corruption and mismanagement with the old administration which also touches on the point of change of leadership raised by Hon. Kasajja, that is about change of leadership. I think that is covered under Clause 4. That if these circumstances persist, then the leadership can be changed - the elections can be held. Otherwise, lastly maybe, I want to allay the fears raised by Hon. Tinyefuza about the impact on the districts coming together under a charter. I think in the first incidence, the charter will be the binding document among those districts which have come together and those districts will have come together for purposes of culture and development. So that if there are problems in one of the districts that has come together, then that district will first of all sort out its problems with the member districts within the Charter, and see how it will redress its terms and conditions which bind it to the Charter before deciding that the Central Government takes over. Maybe if it is in the field of development or financial difficulties, other districts can salvage the situation so that there may be no need of asking the Central Government to take over. So, there it will be the Charter which will be the primary document and before any district takes any step with regard to the Centre, it must make sure that it has fulfilled its obligations under the Charter.

Lastly Mr. Chairman, Hon. Atwoma raised the issue of approval by two thirds Members of parliament. I think really given the fact that the aim of decentralisation is to take power to the district, I think if there are really serious circumstances as we have outlined which necessitate the Central Government taking over a district, then those circumstances will be genuine, they will be known by everybody and therefore, I would have no problem with two thirds of Members of parliament approving the taking over because it will mean it is a really serious matter of National interest. I thank you, Mr. Chairman.

THE CHAIRMAN: Two thirds of the whole Parliament or two thirds of those present on that occasion, forming a quorum?

MR. MASALU MUSENE: It would appear, two thirds of Parliament.

THE CHAIRMAN: Two thirds of the entire Membership of the Parliament?

MR.MASALU MUSENE: Yes, it must be a serious matter.

THE CHAIRMAN: Hon. Ngobi, I can see that has provoked you.

MR. NGOBI: (Presidential Nominee). Thank you very much, Mr. Chairman. I have been provoked. I think in this situation, you find that if the circumstances are such that it is necessary to take over, it means that the situation is grave, we should allow Members of Parliament who are present and voting instead of waiting on for the entire Membership of Parliament. Because the situation is grave, we want to save - to take measures that will be necessary. And therefore, we should not make it unduly difficult. And that is why I think that we better - if we have to bring in figures, let us have two thirds of Members present and voting. Thank you, Mr. Chairman.

MR. MIGADDE: Thank you, Mr. Chairman. Mr. Chairman, I thought the reason why Hon. Atwoma introduced the question of two thirds of Parliament was to make it difficult to manipulate the Parliament. If that was the idea, Mr. Chairman, I would insist that we take two thirds of the full Membership of Parliament. Because the idea is such that Parliament is not misused in order to take over Parliament on grounds of politics. And therefore, Mr. Chairman, I would insist that we insist on two thirds of all Members of Parliament.

THE CHAIRMAN: Since there are several situations here, you can have a scenario where a state of emergency has been declared in a district, do you still need two thirds of Parliament in that one or there are general circumstances? Now, the issues are really very simple. I think there is a general view that there should be a bit of more control on the take over. Now, Hon. Atwoma suggested two thirds of the entire Parliament, like we do have our two thirds here whenever it is desired for certain situations of the entire CA. Now, there is a view that it should be two thirds of the Members present and voting. I think we have to make a decision on this one. Hon. Basaliza, you will be the last one, then we decide.

MR. BASALIZA: Thank you very much, Mr. Chairman. Mr. Chairman, I support the view that there should be two thirds of the Members sitting. Mr. Chairman, all these situations require or show us that for example in (a), what does this Council so request? It means that this Council has been studying this situation for a long time and it has requested - it is eager to see to it that this administration is taken over and the sooner the Parliament takes over, or the president takes over, the better. So it means that it is better in the interest of the country that two thirds sitting should usher or allow, or give the president powers to take over such districts. Furthermore, Mr. Chairman, these conditions of taking over almost show that the district is in a state of emergency. And it requires a quick remedy. And Mr. Chairman, if we allow two thirds of the Members of Parliament, then they might delay the process and in the end, this might suffer administratively, financially and in various ways. Mr. Chairman, I support the view that, two thirds of the Members present should pass this idea. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Now, the proposition is this, it is on the Floor by virtue as a proposition from Hon. Atwoma, it was not resisted by the Chairman of the Committee. The only difference is the extent of the two thirds. Now, we shall put the question. I want to put the question.

MR. LIIGA: Thank you very much, Mr. Chairman. Mr. Chairman, if I recall properly, we passed a provision in Clause 8 of Article 129 with respect to war and emergency situations which reads as follows: "*Any resolution passed by Parliament for the purposes of Clauses (4) and (5) of this Article shall be supported by the votes of not less than half of all the Members of Parliament.*" Now, the clauses referred to were dealing with a state of emergency maybe extended by Parliament for a period not exceeding 3 months at a time. And; "*the President or Parliament shall, if satisfied that the circumstances of the declaration of the state of emergency have ceased to exist, revoke the proclamation by which the state of emergency was declared.*" Mr. Chairman, I see a possible conflict here between that Clause and what we are trying to discuss now. We have already passed it that more than half of all Members of Parliament should support propositions of this kind.

THE CHAIRMAN: But you see, what we did there is, we said; for purposes of war and emergencies, you require an absolute majority i.e. 51

percent or more of the entire Membership. Here, what Hon. Atwoma was saying was that, we need two thirds absolute majority. Two thirds of the entire Membership. Two thirds, absolute majority. There are others who are saying, it should be two thirds of the Members present on that occasion so long as there is a quorum. Now, this is for the purpose of taking over a district administration and I think the general feeling is - regardless of how we did the other one, the view is that decentralised power should remain with the people and it should only be in very dire circumstances that it should be retrieved by the central government. I think that is what the argument is. Hence, they need to protect. The question now we have is quite a simple one; make a choice between two thirds of the entire Membership of Parliament or two thirds of the Members present and voting. And I have said, when we vote, those who say "Aye" to Hon. Atwoma's Motion, if they carry the day, they will have carried two thirds of the entire Membership. If the "Nos" carry it, they will have carried the day for two thirds of the Members present and voting. Okay? So now let me put the question. (Interruption) - No, I think let us vote now. The question is that those who support Hon. Atwoma's Amendment that, we should have two thirds of the entire Membership of the House -*(Interjections)* - No, there was rigging, I will put it again. There was rigging on both sides. People began voting even before I put the question. I might say, due to the lobbying, I will try again. It was very difficult. Sorry! You see, it is crucial because it really determines the stability of our administration. So, Members should think about it carefully. So, I will put the question again.

(Question put and agreed to)

THE CHAIRMAN: And so, I take it that having approved that it is two thirds of the entire membership - any difficulty with (a), (b) as amended and (c)? No, I will put the question on each one of them because you have debated them really, there is no point going back. There was a Motion on (b) to amend and that was accepted by Hon. Atwoma and I put the question I think (a) was accepted. Someone wants to amend (b)? Hon. Leander Komakec, you have been putting up your hand, is it on (b)?

MR. KOMAKEC: Thank you, Mr. Chairman. I have a problem with actually two of those sub articles, both (a) and (b).

THE CHAIRMAN: No. (a) we have approved it.

MR. KOMAKEC: Well, I have problems with (b) then because I wanted to move an amendment much earlier on but since we have passed (a) now, I let it go. Because I think (a) and (b) should have gone. We leave only (c).

THE CHAIRMAN: Well, I do not think from the voices on the Floor, you would be having a very difficult task.

MR. NSAMBU: Thank you very much, Hon. Chairman. I entirely agree with the objective but the words which were used in the opening clause to my mind are too strong and destructive. We should have chosen some mild word, the word "takeover" to me means replacing an entire administration of the estate. And I would have thought that probably the government would be stepping in to assist the administration rather than taking over all the responsibility. The way it has been worded sounds so -

THE CHAIRMAN: Hon. Nsambu, you know that we have just voted on that particular provision because this whole vote was to take that but with a two thirds total Membership of the Parliament to approve before the president can take over. So, I do not think we should really re-open debate on that one.

MR. NSAMBU: In the circumstance then, I would say we delete (b) -the last portion of it.

THE CHAIRMAN: In fact, I was going to put a question on (b).

MR. NSAMBU: And (c).

THE CHAIRMAN: No, I want to put a question on (b) It has been amended by removing *"or any other part of Uganda"*. So, there is no problem there. I now put the question.

((b) as amended agreed to)

THE CHAIRMAN: And (c) I put the question.

(Question put and agreed to)

THE CHAIRMAN: If anybody is dissatisfied, of course the rules are very clear.

MR. MASALU MUSENE: Mr. Chairman, it is the recommendation of the Committee that Clause (2) reads as follows: "*The exercise by the president of the power conferred by this article maybe done through such persons or officers, as the president may think fit.*"

THE CHAIRMAN: Although the words, "*may think fit*" look a bit clumsy, as the president appoints, I think that would look better.

MR. MASALU MUSENE: Okay, Mr. Chairman, we have no objection to that. It is a technical matter. Clause (3); the committee recommended that Clause 3 reads as follows: "*unless approved by Parliament for a longer term, the exercise by the president of the power conferred by this article shall be for a period not exceeding 90 days.*"

THE CHAIRMAN: Agreed. Next, Clause (4).

MR. MASALU MUSENE: Clause (4). The Committee recommends that Clause (4) reads as follows: "*Where, after the exercise by the president of his or her power under this article, (a) circumstances make it impossible for the district government to resume administration of the district and (b) the unexpired term of a Council exceeds 12 months, elections of a new council shall be held within 6 months after the president took over the administration of the district. (Interruption)*

THE CHAIRMAN: Which point of procedure is it?

MR. WACHA: Mr. Chairman, I wanted to move an amendment by including a new Clause (4) before we come to the committees proposal of (4).

THE CHAIRMAN: Would your formulation affect the present (4)?

MR. WACHA: The idea is that what I am proposing should indicate what should apply before (4) comes in. Maybe it would help if the Chair knew what I was trying to -

THE CHAIRMAN: Would you read it out so that -

MR. WACHA: Mr. Chairman, remember I raised the issue of what happens to the organs of the district, during the application of this article. The Chairman of the Committee tried to answer it but it is my feeling that he missed the point. I think what is intended is that, in the application of this article, when the president is exercising his power of taking over of a district, then all the organs which are created by the political application of decentralisation in a district cease to function. I think that is the idea. All the other organs which derive their powers under Article 205, of this Constitution are suspended. So, I was trying to say, Sir, that we put in Clause (4) which should read as follows that: "*in the application of the provisions of this Article, the operation of Article 205 shall stand suspended.*" This is because 205 as we have already passed it gives the political legitimacy for the operation of decentralisation in a district. Now, the formulation can be improved upon but the idea is that nobody, during the time when the president is exercising his power of taking over of a district, should again say that constitutionally, he has a right to function until the take over of the president has been provoked.

THE CHAIRMAN: Now, what does the president take over, does he assume legislative powers as well as the executive powers that were vested in the council and district executive?

MR. WACHA: Again if he does not, then what does he take over?

THE CHAIRMAN: I think Hon. Ben Wacha has a point. We would be leaving it rather vague if we do not have a provision which specifically says that during the period of administration of the districts by the president, the district council, and the district executive or chief executive shall be suspended. Otherwise, are they going to run side by side?

MR. MALINGA: Well, Mr. Chairman, and Hon. Delegates, I can see the point that Hon. Ben Wacha is trying to put forward. But I am of

a different view. I am of the view that once the president has been given power to take over the administration of the district, then the district council, the district chairman, and the district executive committee shall perform such functions as the person appointed by the president to administer the district shall assign to them. Because, look! these people are available, they are there, and they could be made use of, and they have a certain amount of legitimacy. So, I would suggest that the president should be able to make use of them to the extent that he feels it necessary in the circumstances of the situation. Because even to find a solution to the problem or problems which have given rise to this situation will need their cooperation. That is the only point I want to put forward, Mr. Chairman.

PROF.NABUDERE: Thank you, Mr. Chairman. I want to make a similar point that what the president takes over is the administration of the district. The administration is a distinctive function from the legislative function. In fact, we have laid out in Article 205, the various functions of the district governments. Therefore, it is possible for the President to administer the district without assuming legislative functions of the council still being utilised by the president. All that the president would do would be would be to appoint other administrators in place of the executive committee. The Legislative function could still be exercised by the district council.

PROF. KABWEGYERE: Thank you, Mr. Chairman. Mr. Chairman, if we look at Article 22, the opening clause says: "*the president may with the approval of Parliament...*" Now, in this phrase, I see the president detailing the kind of power he needs in the district. Therefore, he should be able to say, which of the institution in a district he will need or he will not need. Mr. Chairman, what we are talking about is not only a political situation, because it may be a disease. For example, it may be an epidemic in which he will need the operation of a council to go around campaigning and helping in the fighting of the epidemic and Clause (a) where the district council so requests. It means that their organs still have a voice, but they have failed in meeting the challenge of the situation. So, they need complementing. Mr. Chairman, therefore, I think to put in the constitution that a president can suspend a whole clause, or that, a clause is suspended by the Act of the president in this situation would in my opinion be uncalled for.

THE CHAIRMAN: No, but I think it is a question of formulation. If what you want is that during this time when the president is running the affairs of a district the operations of the district council and those of the executive stand suspended until they are reinstated, that is a different matter. If you are saying, you understand the administration, then it will mean that you will be in charge of the Civil Servants and leave the politicians to continue. Then why does he come in?

PROF.KABWEGYERE: Yes, but Mr. Chairman, in the very Act, what will he be telling Parliament? He will be telling Parliament that for example, district (a) has requested for the president to take over, and that will obviously indicate what that involves. If it involves the suspension of the Article, Parliament will approve.

THE CHAIRMAN: You do not suspend the Article.

MR. NEKYON: Mr. Chairman, thank you. I think we should be clear on what we really want to do. To me, the question which Hon. Wacha put previously, and which was avoided by the Vice Chairman of the Committee was crucial. What does taking over of such a situation in a district mean? To me, from what I have seen in various constitutions, it means taking over the legislative power and the executive power which comes from the legislative wing of the government. There is no way you are going to keep the district council intact, and the chief executive intact and then the president tries to run the district, running parallel to these bodies. Either you have these bodies or you have the president. You cannot have all. Two bodies cannot legislate at the same time. What he means is, usually as in the case of India which I quoted, the Civil Service remains intact. And in India it works mostly because the governor is usually a civil servant - a senior civil servant, he takes over. So, he becomes a legislator and chief executive. He orders the Civil Servants to do this, that and the other until the situation is restored. Let us not try to blunder and say, this body will be suspended or that they will be hanging around there. No!

They must go out of the office completely. So, the presidential representative runs the district with the Civil Service.

THE CHAIRMAN: In fact actually, in some of the constitutions where they have similar provisions, they do not write it this way, they normally go direct. They say, where 1, 2, 3, is in place, the central government may suspend the district government or the state government, or the provisional government directly so that there is no confusion about taking over administration. I think this is where the problem is arising from. In others they are quite direct, they simply say, like in Pakwanijun, the Governor General suspends it and then they give him three months within which to clean up and make up his mind whether he thinks he has done a good job and those people can continue or call general elections in the province.

MR. KARUHANGA: Thank you, Mr. Chairman. Mr. Chairman, I think the words of Hon. Nekyon should be taken seriously. The Article 205 has tied the Local Authority - has made the administration of Local Government both legislative and executive. It reads: "*A Local Government shall be based on a council which shall be the highest political authority within its area of jurisdiction and which shall have legislative and executive powers to be exercise in accordance with this constitution.*" During that exercise, in the Chapter following the relationship between Local and Central Governments, we find that we have just said: "the president may, with the approval of two thirds of all Members of Parliament, take over the administration of any District in any of the following circumstances." So, in my view, Hon. Wacha just managed to point out a need. He thought there was actually a gap remaining, but in fact it is not there. But having a legal mind, I think what he wanted was to tie up one section on another. Now, I fear that tie myself. And why I associate with Hon. Malinga without accepting the reasons he gave, the reason why I fear the tie is that, with this Article 222, which gives Parliament and the president power to take over the administration which is both legislative and executive, there is a mention of the emergency powers which have a different standard from the ones we have set in this. Especially when you come to see (b). Therefore, I think the wording in itself, has covered Hon. Wacha's fear in 205 because it says *that the exercise of power is in accordance with this constitution.*

THE CHAIRMAN: Then why do you not say that the president may take over administrative and legislative powers of a district if really that is what you want to say?

MR. KARUHANGA: Yes, maybe we can do that, and then the word administration would be covered instead of having to go to interpretation. So, Mr. Chairman, I think we can adopt your advice.

PROF. NABUDERE: If we do that, we say both legislative and administrative powers, then we must give the president powers to actually legislate during such eventuality either by ordinance -

MR. OBUA OTOA: Thank you, Mr. Chairman. I am wondering whether what we are arguing about is not covered by Clause (2) of 222 which says that *the exercise by the president of the power conferred by this article may be done through such persons or officers as the president may appoint.* We have already passed that clause. Now, the vacuum that Hon. Wacha is talking about could be that, maybe the District Council has been dissolved, some other organ has been dissolved and so on and so forth. But this particular Clause seems to me to allow the president to appoint any person or group of persons to carry out the administration of the district when he has taken over that district. I am wondering whether we are not really belaboring the point for nothing because the president under this clause can decide even to use certain persons who have been members of the district council or members of the executive committee, or he may send some people from the Centre and say, I am commissioning you to go and administer district so and so. You are going to be responsible for this and that and the other. I wonder whether Mr. Chairman, that worry has not already been taken care of by Clause (2)?

MR. DICK NYAI: Thank you, Mr. Chairman. Mr. Chairman, if we read 222 1(a) very carefully, it means the president is constrained to take over where the District Council so requests. Now, if the District Council so requests, it means

that the District Council has found the elected leaders incompetent to continue. And I think I would go along with Hon. Ben Wacha, in that we do not want a cloudy situation where the District Council has said, the president shall take over. The president appoints persons or officers whom he wants to do the administration and governance of the district. And then here, as elected members say, we were elected, we are still also leaders. I think the moment the District Council says that the president should come to our rescue, it already means there is no confidence in their leadership to contain the situation. And therefore, the moment the president takes over the leadership of a district, then those people who were elected must immediately give way to the extent of the time the president decides to hand over the management of the district back to the citizens of that district. Otherwise, you are going to have authorities which rival - one has legitimacy through parliament, the other has very questionable legitimacy, but where the legitimacy is going to be was not dissolved. I think it is important we put this in the constitution that once a district asks for the president to take over or even in cases of emergency, it would be normal for Parliament and the president to say, I am going to take over District "X" for the simple reason that the people who are on the ground cannot handle the situation. I think once we accept those two positions, Mr. Chairman, I can see the merits in Ben Wacha's amendment. Thank you very much, Mr. Chairman.

MAJ. GEN. TINYEFUZA: Thank you, Mr. Chairman. Mr. Chairman, I was looking at the provisions under the state of emergency. For instance, if you looked at Article 70, Clause (2) which talks about provisions of any enactment other than an Act of Parliament dealing with the state of emergency, this brings in an idea that actually, there could be circumstances and this being one of them, (b) specifically talks about states of emergency where there may be a rule by ordinance for instance. Now, I find it rather unworkable, Mr. Chairman, that we should have - for instance if there was a state of emergency in the district and a different law was enacted for instance to deal with reversal by a state legislature, and then the president issues orders and the district is taken over, passes a legislation invalidating the presidential directive, what would be the effect of that? So, I think that the president taking over actually means lapsing of the local authority both in legislative law, and administrative law. The two cannot run concurrently, they would bring conflict. Therefore, I see two alternatives, Mr. Chairman. That if a President takes over a district, then the matters of that district, shall be - for instance legislative matters shall be handled by the state legislature. It can no longer be by the district authority or it will be by ordinance of the president. So, it should be one of the two but not the Local authority. Because the Local Authority would definitely conflict with the higher authority which is now running the district. So Mr. Chairman, I was suggesting that we specifically provide who shall actually be legislating in the event when the president has taken over because I think that the real centre of power is whoever passes the laws at that time on which that district is being run. And I suggest that, it is by ordinance of the president.

MR. DAMIANO LUBEGA: Thank you, Mr. Chairman. To come to the point I wanted to make, if I could propose this formulation, this formulation is probably given the meaning that we want to have under the clause under discussion. And I propose that the formulation reads: "*exercise by the President of the power conferred by this article may be done through such persons or officers and in such a manner as the president may prescribe.*" If you put this formulation, the president will be empowered to appoint officers, but will also be empowered to prescribe the manner in which the district may be run in that particular formulation. Then we can add that addition as suggested by Hon. Tinyefuza. But in my mind, even if we do not hope for an ordinance, if we use the word "prescribe constitutionally", then the president will have the powers to appoint the officers and also to prescribe the manner, in which case, when a resolution of Parliament is being passed, all this must come out because it will be he himself who is going to formulate the details for the formulation of the resolution. So, Mr. Chairman, I propose that the formulation read: "*exercise by the president of the power conferred by this article, may be done through such persons or officers and in such manner as the president may prescribe.*"

THE CHAIRMAN: That is in respect of Clause (2). Now, you are saying that, that would make it unnecessary for us to proceed with Hon. Ben Wacha's formulation?

PROF. SENTEZA KAJUBI: Thank you, Mr. Chairman. Mr. Chairman, while I could see the logic in Hon. Damiano Lubega's formulation, I do not agree that that is the way with the proposal made by Hon. Ben Wacha. The proposal that the president should take over both legislative and executive powers during the time when he has taken over the administration of the district is very reasonable. This is to remove any doubt as to who should be in charge. After we have agreed on that one, then one can say, the president in his exercise can appoint whoever he wants, whoever he feels it fit. But we should first of all have a clause which makes it clear that during the period when the president is in charge of the district, he should be the one who is responsible for both legislative and executive responsibility of the district. This, I think will even remove the possibility of district administrations, district councils previously asking the Central Government to take over their administration simply because they have not been able to use the money well enough to pay the salaries of the Civil Servants or to repair the roads. There is a provision in this constitution - is it under 210 - whereby if a legislative organ of the district is dissatisfied only with the administration, they can remove them. There is a provision for that. But when they come to the extent of going beyond merely removing the administration or the executive organ of the district and then asking the central government to take over, then the matters are serious both for them as well as for the executive arm of the district. Therefore, I would like to support the proposal that during the period when the president has taken over the administration of the district, he should be responsible for both the legislative and the executive powers of the district. Thank you.

THE CHAIRMAN: Then I think let us phrase the amendment properly so that we make a decision. Hon. Ben Wacha, could you read your motion again.

MR. WACHA: Thank you, Mr. Chairman. I have had the advantage of some technical knowledge from the technical committee, and the proposed Clause (4) reads as follows: "*during the period when the provisions of this article are in operation, the provisions of article 205 in this Constitution shall stand suspended.*" Because the officer in charge says it can still be further modified and we could find a home for it, whether before Clause (2) or the proposed Clause (4), that should not matter. But the idea is that the president must be given a free hand to administer and to legislate for the district during the time that he has taken over.

MR. MASIKA: Thank you, Mr. Chairman. I think the problem we are facing can be solved quickly if we go back to Clause (1) of Article 222 and amend it to read as follows: "the president may with the approval of two thirds Members of Parliament, take over the executive and legislative powers of any district in any of the following circumstances." This would remove the vagueness of taking over administration and it would answer the question raised by Hon. Senteza Kajubi, saying that the District Counsellors may be tempted to call in the President hoping that he will only take over the executive and leave them still standing by. Now, if the President were to take over both the executive and the legislative powers under Clause (1) of article 222, there will be no problem.

THE CHAIRMAN: I do not think we should have a quarrel with that. Hon. George Masika, Hon. Ben Wacha would like to hear you again.

MR. MASIKA: Thank you, Mr. Chairman. I was saying that instead of introducing another clause under this article, we should go back to Clause (1) of Article 222 which we have already agreed to adopt, and amend that introductory part of Clause (1) to read as follows: "*the president may, with the approval of two thirds of the Members of Parliament, take over the executive and legislative powers of any district in any of the following circumstances.*" Now, that would remove the vagueness which is now apparent in Clause (1) with administration. The word "administration" in itself is not comprehensive enough. And as I said earlier, it gives the impression that the council can still remain in being while the executive is removed. And that coupled with the provisions of Clause (2) which reads: "*the exercise of the president of the powers*" now it becomes "powers" and not "power". "*The exercise of the president of the powers conferred by this article may be done through such persons or officers as the president may appoint*" would make it quite clear that both the executive and the legislative officials of the district are suspended.

THE CHAIRMAN: I think I can see total agreement, so now let me put the question on Hon. Masika's formulation.

(Question put and agreed to)

THE CHAIRMAN: We had gone to (4). We had approved (3) and (2) has been slightly amended by adding "s" to the word "power" to make it "powers." I think let us see how it comes from these people and then if necessary, we can revisit it at reconsideration otherwise we shall spend the whole time arguing. Now I think let us go on to (4). I will consult with the Hon. Nabudere on the side. Hon. Delegates, Number (4) had been read out.

MR. NDEGE: Thank you, Mr. Chairman. 4(b): I do not know the relevance of 12 months. I think in my opinion, the other administration cannot resume, there should be immediate elections of a new council, which should take over and we should multiply this to 12 months. I do not know the significance and why the committee thought that it is 9 months remaining to the end of the period, they cannot have an election and have a new council. So, that will give the president another 11 or so months to administer a district without any - I mean they will just give him that sort of legitimacy. I do not know why they thought of 12 months. Maybe they could reduce this to 6 months or 3 months.

MR. MULENGA: Thank you, Mr. Chairman. In Clause (3), it is specifically said that the President will exercise the power he has taken over for 90 days. That is three months unless Parliament extends it. In Clause (4), there seems to be a mix up, on the one hand it has the effect of saying that after 90 days if the administration cannot take over its duties, or the local government cannot resume, then there shall be an election in six months, but only if the unexpired term exceeds twelve months. If it happens in the last year of their term, we are left with an unclear positions. If there is 11 months to go, why can we not say the President continues straight, but to say where after the exercise, that means the President has left.

THE CHAIRMAN: I think there is a problem here.

MR. MULENGA: There is.

THE CHAIRMAN: Do you have a suggestion? While Hon. Mulenga is working on something, could Hon. Liiga -

MR. LIIGA: Thank you, Mr. Chairman. I think we could solve this problem this way, I am just suggesting. To me, Clause (a) we should leave that as it stands, but then let us delete Clause (b) entirely. Now that the unexpired term of the council exceeds 12 months, let us delete that and marry the part left, that is *"elections of a new council shall be held within six months after the President takes over the administration of the district."* I think that would clearly cut out any doubts as to what would happen should the President find it impossible for the district to run with its whole administration or whatever new arrangement has been made.

THE CHAIRMAN: I think what is confusing is the 12 months, otherwise, if you are trying to look at a situation where you say the President is given three months in which - of course, it is also illogical when you are talking about - what did we say about the state of emergency? It must be renewed, is it every three months? If it is every three months and there is grounds for taking over the state of emergency, then should the President hand over before the emergency is finished if it is renewed?

MR. LIIGA: I think what is provided, Mr. Chairman, is Parliament will review it and say, look the situation is still this bad, continue with the administration.

THE CHAIRMAN: But the logic - you say we have got a state of emergency, therefore I come to take over; Parliament extends for another three months, and another three months meanwhile you conduct elections to reinstate the local administration when in fact the grounds for which you took over still exists. This is where I am finding the problem.

MR. KARUHANGA: Thank you, Mr. Chairman. I want to explain the way I understand this clause, and I think the rationale behind this clause is on the district council. A district council which has not been sitting for one year because of circumstances either caused by them-

selves or outside them - it could have been caused by an epidemic, but if it is caused by themselves and Parliament sees it fit to keep extending this exercise of the President to administer every three months up to a time when it comes to a year, then there becomes an absolute need for the electorate to look for new legislators and leaders in the district. The purpose of this article, in my view, is to say that out of the four years the council is supposed to have served, if one goes without them making a contribution, then there should be need for elections for a new council. Now, the question which you posed at the end before you gave me the Floor, Mr. Chairman, is still unanswered by my explanation, I am aware. Because you say if the circumstances are still prevalent, which brought that suspension or intervention, how can there be elections? But I think that is not the issue, the issue is that the elections are also not limited on the day the year comes. It says it will be held within six months of the time the President took over the power. So, if we first of all, Mr. Chairman, appreciate that the purpose of this article is to give a chance to the electorate to elect a new team, I think that is the rationale behind this article. If you accept that, then it will no longer be confusing.

THE CHAIRMAN: But I think what we are looking at is this; one, that where he has exercised the power on the grounds of a state of emergency, then the President should conduct elections within a specified time upon ceasation of the state of emergency or if it ceases from three months, maybe, hand over to the existing council. Because in any other case, you are looking at either the district which had problems, as they request and they assume that they can be corrected within three months, or you found gross mismanagement of the district, the President is given three months or at most six months to reorganise, conduct elections and bring new people. So, I think it has to be refined.

MR. KARUHANGA: I think, Mr. Chairman, the election - the import of this is that the President should not conduct new elections unless a year has passed, in away.

THE CHAIRMAN: But it does not come out quiet easily. Hon. Mulenga you have had enough tirhe to formulate.

MR. MULENGA: Mr. Chairman, I would want to ask, is it that we should provide for election and if so, in every case when the President had done the work and finished well, or is it that we are providing for him handing over to the local government, or both? Because there are two possibilities; one, he does whatever he went there to do, finishes and hands over to the local government, or we say - and I do not see why yet, that he organises a new election for a new team to come in. I can see a possibility of both alternatives. If the administration, and perhaps, that is why they started with (a) which says circumstances which make it impossible for the district government to resume if it is impossible for him to hand over to them but otherwise, the district is now governable, that is the cause for election, I presume. But we have also to speak of when he hands over normally, or is it not necessary? Because once that is clear, one can know how to try and draft.

THE CHAIRMAN: Under the normal circumstances they are looking at (3) which says unless approved by Parliament for a longer period, the President shall be for a period not exceeding 90 days.

MR. MULENGA: And then hand over?

THE CHAIRMAN: It does not say, does he hand over or does he conduct elections?

MR. MULENGA: I think now I am beginning to feel that maybe we should ask the Chairman what the committee is looking at or was looking at. If it is assumed that after 90 days he hands over, you do not have to say so. Now they are providing for a situation where he cannot hand over, and must cause an election.

THE CHAIRMAN: Let us hear Hon. Masalu Musene how he understands his report.

MR. MASALU MUSENE: Thank you, Mr. Chairman. It is true as you stated that what the committee had in mind was to start with Clause (3) that the minimum period is three months. Now, depending on what circumstances led to the take over of the district government, if after three months everything has been put correct, then the President hands over power to the district government. But Clause 4(a) says if cir-

cumstances make it impossible for the district government to resume, which means that the problems which led the President to take over are still continuing, then if that happens and the council had its term of one year or more, the President will order elections, because he will have a longer time. But if the circumstances are impossible for the district to take over and their term was, say ten months, then Parliament will, under (3), approve the President to continue for a longer term. The aim behind this is that elections are a very expensive exercise, so if we have only ten months to go or five months to go, why hold elections and then after that the district term will expire and then hold fresh elections? So, the idea was that the elections should be held after 90 days if this district council still had 12 months or more if the problems leading to the take over have not been resolved. So, the essence there is really the election - you know, in only three months you should not rush to elections. I do not know whether that clarifies Hon. Mulenga's point.

DR. BYARUHANGA: Thank you, Mr. Chairman. Although I am a member of Committee 4, it now appears to me that we did not provide clearly for all scenarios that are now being mentioned as causes for the President to take over. Because in my view, the President may take over in two circumstances; one, where the council and its executive are the causes of the problems within the district, or when the problems in the district have been caused by something or someone else other than the council and its executive. Now, in the case where the problems have been caused by the executive and the council, definitely, the President should never hand over to them, the President should be empowered to dissolve the council and its executive and allow for fresh elections. Where the causes of problems within the district are from without the council and the executive, then the President at the expiry of these 90 days can hand over again to the old executive and its council. Therefore, we must clearly provide for the President to have clear powers of dissolving the council and the executive, otherwise if we do not say so, this Clause (4) continues to be confusing.

THE CHAIRMAN: So, what you are suggesting is that you can run a scenario to say where the President exercises the power on grounds of a state of emergency having been declared in a district or in the whole country, he shall hand over as soon as the emergency ceases to apply, or where it is on other grounds, he must conduct elections within six months from the date of take over.

MR. WACHA: Thank you, Mr. Chairman. I think the confusion which is arising here is because the committee has misled the House into thinking that there are two reasons; (a) is one reason and (b) is another reason. I think there is only one reason where the elections must be held, and therefore, we must join both (a) and (b) to have only one paragraph. Maybe that will assist to read: *"Where circumstances make it impossible for the district government to resume administration of the district and the unexpired term of the council is at least 12 months, election of a new district council should be held in six months."* But if you read (a) and (b) jointly, then you are running into a problem.

MR. MASALU MUSENE: Mr. Chairman, in view of what has been stated, I feel (a) and (b) can be combined and with some alterations, without necessarily altering the original meaning. So, I request that that one be stood over until tomorrow, then we come up with some formulation which combines both without altering the meaning.

THE CHAIRMAN: Okay, we agree that we give the Chairman and his committee a chance to go and reformulate because as it stands, it is really confusing. Either you start with a small portion and say that where the unexpired term is less than 12 months, the President will continue and elections will be held in accordance with whatever, and in any other case, we shall hold elections but as we say, let us stand it over for you to go and reformulate, but do remember the contribution of Hon. Byaruhanga, maybe you may want to take it into account that depending on circumstances leading to the take over, you may have a different scenario as against the other. May I ask Hon. Nabudere to tell us his lacuna so that in the formulation, they could take it into account.

PROF. NABUDERE: Mr. Chairman, I consulted with Hon. Masika and the Chairman of the committee, they think that it is taken care of,

but what I had wanted to point out was that once we have given the President powers to legislate as well, then we should state the manner in which he should exercise it, and I propose that we have a new Clause (4) to say: *"where the President has assumed legislative powers under this clause, he shall exercise this power by proclamation or ordinance."* Hon. Masika thinks that under the clause which we amended, the President has powers to use any means at his disposal.

THE CHAIRMAN: Can I suggest that the Chairman goes to think about it with his team and tomorrow, if you think there is merit in it, he can also comment on it.

MR. MASALU MUSENE: Mr. Chairman, there was a smaller matter which was referred to the Committee on page 18 of the report; Clause (3), concerning whether secretaries should head standing committees or not. I do not know whether we deal with it now or we leave it to tomorrow also.

THE CHAIRMAN: I think what we shall do is - now, have you circulated some report on it?

MR. MASALU MUSENE: It was circulated this afternoon.

THE CHAIRMAN: Hon. Delegates, just a moment, is it this one on article 210?

MR. MASALU MUSENE: Well, we thought it proper to re-write all of 210 but then the relevant question starts on page 2, but then we re-wrote the whole of 210 for Members to follow up. But if they feel they want to internalise it, then we can start with it tomorrow morning, Mr. Chairman.
THE CHAIRMAN: I think let us give Members a chance to read through it and then we revisit it tomorrow and tomorrow we shall start - unless the Chairman and his committee will not be ready, we shall then start on 211 to clear this report and then we go on. Do you think you will be ready tomorrow with these other provisions relating to 222?

MR. MASALU MUSENE: In fact, Mr. Chairman, I want to request Members of the committee to remain behind after this adjournment and some other Members like Hon. Ben Wacha so that we work on Clause (4).

THE CHAIRMAN: Hon. Delegates, with that I would like to adjourn and we resume tomorrow morning at 9.00 a.m. We are adjourned, thank you.

(The Assembly rose and adjourned until Tuesday 11th April, 1995 at 9.00 a.m.)

THE REPUBLIC OF UGANDA

PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

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TUESDAY, 11TH APRIL 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3959]

11th Tuesday, April 1995.

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

The Chairman, Hon. James Wapakhabulo in the Chair)

PRAYERS

(The Assembly was called to order)

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

CHAPTER 13 - LOCAL GOVERNMENT.

Article 210 - EXECUTIVE COMMITTEE.

THE CHAIRMAN: Hon. Delegates, when we adjourned yesterday, we agreed that, we would start by looking at Article 210. An amendment or some circulation had been made of a proposed redraft and if the Chairman of the committee is ready, I will give him the Floor to take us through this report before we can go to the next.

MR. MASALU MUSENE(Manjia County): Thank you Mr. Chairman. I would refer the hon. Delegates to page 18 of our report, that is where Clause 3, which was referred to the Committee is. Clause 3, was referred to the committee to reconsider whether secretaries should head standing committees or not; especially in view of the doctrine of separation of powers. The matter was discussed at length yesterday, by the committee in the morning and in the end, the committee resolved by consensus, that secretaries should not head standing committees. Among reasons given were, that for decentralization to be seen to be effective, secretaries are principally going to act as ministers at district level, and together with the Chairman and Vice Chairman, they constitute the executive. So, standing committees like those of Parliament, should be separate, so that, they check on the excess of their powers, if any; especially in view of the rampant corruption now prevalent in many districts. They should act as watch dogs. So, Mr. Chairman, the re-formulation; reproduced the whole article, for purposes of clarity and follow up. And, now instead of 3 being as it is on page 18, we thought would bring in, 4, 5, and 6, which have already been passed to be 3, 4, and 5, as is on page I of this report. So that secretaries are dealt with on page 2, Clause 6. That a *secretary shall have responsibility for such functions of the district council, as the District Chairman, may from time to time assign to him.* And in the following paragraphs, we have made it clear that, the standing committees are to be appointed by the District Council. And we have provided for the composition of the committees, purposely to exclude the Chairman, the Vice Chairman and the Secretaries although we have provided that, they have attend the proceedings of the committees, if they want. But then, they do not vote. This is to ensure separation of powers at district level under the era of decentralisation, so that the secretaries are completely different from standing committees. I thank you, Mr. Chairman.

THE CHAIRMAN: Thank you Hon. Masalu Musene and your committee for the work you have done to clear this area. Should we adopt this report?

MR. KIWAGAMA (Bunya County): Thank you, Mr. Chairman. The committee, as the Vice Chairman of Committee 4 has said, had to reprint clauses which we had earlier passed for smooth flow of the article. Clause 3, however, seems misplaced since we have already established the office of the Vice Chairman in clause 2 (b). Clause 3 in reading that there shall be a Vice Chairman is rather repetitive. Since the clause seeks to establish how a vice chairman, is elected I would suggest that, if the Vice Chairman of Committee 4 does not mind, the first three words *'There shall be'* should be deleted, so that Clause 3 reads; The Vice Chairman, shall be a person nominated by the District Chairman, from among the councilors and approved by two thirds of all members of a council.

THE CHAIRMAN: I think that is okay. Do you have any objection, Hon. Masalu Musene?

MR. MASALU MUSENE: There is no objection to that, Mr. Chairman. And, may be I take this opportunity to point out a typing error in clause 5. Clause 5 says' *If the district chairman dies, resigns or he is removed from office, the vice chairman, shall assume office, it is not speaker.* ' So, that was a typing error. We have already passed that, it is the vice chairman, who shall assume office. That is what we passed.

THE CHAIRMAN: Okay, I put the question.

(Article 210 as re-drafted, agreed to)

THE CHAIRMAN: I now put the question.

(Question put and agreed to)

THE CHAIRMAN: Are you ready to deal with Clause 4, of 219?

MR. MASALU MUSENE: Mr. Chairman, we sat and re-formulated, but I think they are just circulating the reformulation.

THE CHAIRMAN: I think what you could do is, you could read each clause. I think you are only concerned with clause 4, or will you vote on the whole of it?

MR. MASALU MUSENE: Mr. Chairman, when we sat to re-formulate Clause 4, in the report, we also reproduced the whole article 222, so as to incorporate the amendments which were done yesterday, and also for purposes of following up. And Hon. Nabudere had raised the issue of how the legislative functions shall be exercised by the president. So, in this new formulation, we also catered for that under clause 2. And then we renumbered the whole Article. Maybe I quickly read through.

THE CHAIRMAN: But I think there is some error in the opening paragraph. I think Hon. Masika had made some amendment.

MR. MASALU MUSENE: Mr. Chairman, I was going to point that out, we corrected it, but because of the hurry, there was a typing error. So, I want to correct that first. Clause 1, provides that, *the President may with the approval of two thirds of Parliament, take over the executive and legislative powers of any district, in any of the following circumstances. (a) where the district council so requests, and it is in public interest to do so, (b) where a state of emergency has been declared in that district or in Uganda generally (c) if circumstances have arisen, which make it impossible or extremely difficult for district governance to function. Clause 2. The exercise by the President of the powers, conferred by this article, may be done through such persons or officers, as the president may appoint, and the legislative functions, shall be exercised by statutory instruments.* So, this is the second portion which was brought in, to cater for, how the president will exercise legislative functions during that period. The first leg covers the executive functions whereby, he can appoint such persons as he deems fit. That is one of the aspects covered in the reformulation to bring in the second leg. Clause 3, *unless approved by parliament for a longer term, the exercise by the president of the powers conferred by this article, shall be for a period not exceeding 90 days.* Clause 4, is where we now sought to specifically point out what happens after 90,days and especially if after 90 days, the president and parliament think that, the district should not be taken over. What happens if their unexpired term is still over 12 months, and what happens if the unexpired term is below 12 months? So, I think I read through the clause. That *upon the expiry of the term of the president's exercise of his or her powers under clause 3 of this article, (a), the president shall hand back the administration of the district to the incumbent district government.* That is if the circumstances have been rectified within those 90 days. Then after the expiry, the president hands over to the incumbent government. (b) If Parliament decides that, the prevailing circumstances still make it impossible for the incumbent district government to resume the administration of the district. Here we brought in Parliament, because the committee felt that, since the districts are to be taken over with the approval of Parliament. Then Parliament should also be involved in deciding the circumstances which make it impossible for the district governance to resume. So, we said, if Parliament so decides, then (1) where the unexpired term of the council is longer than 12 months, the president shall cause elections for a new district council within 60 days. Two, where the unexpired term of the council is less than 12 months, the president shall continue to administer the district until the next elections are held. This was because, if the unexpired term is more than one year, then it is proper that, a new council is elected to complete that unexpired term. Because the period of one year is long enough for elections to be held within two months and a new council takes over for at least one year, before the term expires. We did this because, the term will expire for all districts. So, now during that period of 12 months, the new council is in place, then when the term expires, then elections are held all over the country in conformity with other districts, where the government had not taken over, and this was to cater for the points raised by hon. Delegates, as to

MR. LUKUMU: Thank you Mr. Chairman. Since we have not expressed ourselves on article 222, entirely. I wish to beg the indulgence of the Chair, to permit me to make an observation on 222 (1)(c). Mr.Chairman -*(interruption)*-

THE CHAIRMAN: No,No! We finished with those ones yesterday. We do not want to go back to them. I think it is unfair.

MR. MASALU MUSENE: Thank you Mr. Chairman. Mr. Chairman, the clarification sought by Hon. Ochyengh has been answered by the information given by Hon. Senteza Kajubi, in that, clause 3 is very clear, if emergency still persist, then Parliament has the power under Clause 3 to pass a longer term or to extend. As to the point raised by Hon. Kabayo, as to what would happen if the situation is normalised within one month or two months, I think that is catered for by the two words, 'not exceeding' 90 days. Besides, clause 4 starts, that upon the expiry of the term of the president's exercise of his powers under clause 3. So, the powers, may expire after one month or two months, and this does not make the 90 days mandatory as such. Furthermore, Mr. Chairman, I think all situations have been catered for, and the main rationale was that, new elections cannot be held, where an expired term is less than 12 months. Because it is really expensive to organize elections then a new council comes in, then they are in power for two or three months only, before their term expires. It will be no good. That is why elections can only be held when they have a long period of one year or above. So I hope that clarifies the situation.

THE CHAIRMAN: Now, I put the question on the re-draft of 222, particularly in respect of clause 4.

(Question put and agreed to)

THE CHAIRMAN: Shall I now put the question on Article 222, to stand part of the draft constitution? I put the question.

(Question put and agreed to)

THE CHAIRMAN: Thank you very much, that clears that article. We now come to 220 or 223.

MR. MASALU MUSENE: Thank you Mr. Chairman. The committee recommends that, former article 220 be deleted and a new article be inserted to read as follows: *Clause 1, there shall be for each district, a Resident District Commissioner appointed by the president, with the approval of Parliament.* The functions of the resident district commissioner shall be prescribed by law. The rationale behind the creation of this resident district commissioner was, the committee noted, that for some time, there has been friction between the office of the District Administrator or Central Government Representative and the elected political heads of the districts. Some Members were of the view that, to resolve this problem, the office should be abolished or that several districts, should be combined under one representative so that, that representative is kept out of competing - *(Interruptions)*

AN HON. DELEGATE: I do not know what is happening!

THE CHAIRMAN: Shall we resume the business of the House please?

MR. MASALU MUSENE: Thank you Mr. Chairman. I said that some Members had suggested,that the Resident District Commissioner combines a number of districts so as to keep him or her busy and out of competition with local politicians. However, in the end, it was resolved that, because of the need for the Central Government or President to be represented in each district, and in view of decentralisation,responsibility being given to the districts, the Resident District Commissioner should remain, and the name Resident District Commissioner was considered to be more fitting with the functions attached to that office. Further reasons were that, there was need for a Resident District Commissioner to remain, because of the need for corporation, and coordination, between the Central Government and Local Governments, if conflicts and suspicions are to be avoided. It was also noted, that there are matters or National Security and Political stability in the whole country which need to be taken into consideration. So, in view of that, it was resolved by the committee that, the Resident District Commissioner will be a representative of the central government in the district and act as a link between the central government and the local governments. That was the position of the committee. However, there is a minority report which has been circulated, but may be Mr. Chairman, I wish to point out to the House that, there were many minority views, but when members of the commit-

tee were called to sit and consider minority reports so that we synchronize them, they never turned up. So, the Chairman, decided that, this be presented directly to the plenary. So, that is why we have this minority report circulated and then, there is attached on our report an appendix, a report - some Members expressed also their minority opinion that, this office should be done away completely. So, Mr. Chairman, that is the position apparently now, I do not know whether to report that, we have two minority reports plus the main report of the committee.

THE CHAIRMAN: Do we have copies of the minority report?

MR. MASALU MUSENE: It was circulated. It was moved by hon Maliro and is dated 6th April, 1995. It was circulated together with another report of Hon. Charles Owor, Hon. Okulo Epak, Hon. Musumba Isanga - they are fixed together, Mr. Chairman. But the other report has been finalised.

THE CHAIRMAN: Now, can I get it clear? We have only one minority report by Hon. Augustine Maliro, Hon. Sebi, and so on.

MR. MASALU MUSENE: Mr. Chairman, I can see also circulated, a Motion to be moved by Hon. Jack Sabiiti, I think this is a Motion to delete Article 223, the article under consideration. But there is appendix (c) to our report which is also to the same effect as this Motion moved by Hon. Jack Sabiiti. That appendix also seeks to delete. They were circulated a long time ago together with the report. But as I said, it is to the same effect as this other Motion which also seeks to delete.

THE CHAIRMAN: So, we have three positions. Actually four positions. There is a recommendation from the Committee.

MR. MASALU MUSENE: Mr. Chairman, I have looked at appendix (c) closely and I think it is not a minority report as such, it is just a Motion, because it includes many Members who are not Members of our committee. I think, it can best be treated as a Motion like the other one.

THE CHAIRMAN: It is a general complaint. Then we have got this other one which recommends, that there should be a CGR or a District Resident Commissioner for each district. There is another Motion which had many Members, but it was withdrawn, and now there is a group of Members still moving that, 220 be deleted. There is another one from Hon. Sabiiti and others to the same effect. Now, we have two which are seeking to do the same thing, then there is one, which is seeking to set out the functions of the Resident District Commissioner, but here, they still call them District Central Government Representatives in a Motion by Hon. Maliro. This other Motion is not dated, so we do not know exactly when it came in. So, what I will do is, I will proceed by giving the Floor to Hon. Sabiiti since his Motion is first, it would negate any other considerations before us. Hon. Sabiiti's Motion is circulated and seeks to delete article 220 or 223, in the report of the committee.

MR. SABIITI (Rukiga County): Thank you Mr. Chairman. After critically studying and analysing the new functions we have assigned the Chairmen of districts and the chief administrative officers, I have reached the conclusion that, it will not be wise to entrench in this constitution the office of the District Resident Commissioner. Mr. Chairman, considering the structures or institutions which we have entrenched in the constitution, I feel that this office does not deserve the same status. My view, is that we should leave this for parliament and the Executive to decide, whether it is really necessary to establish this office. We have already, Mr. Chairman, given the executive power to establish any office. This is contained in article 196.

This article provides that, subject to the provisions of this constitution, and any Act of Parliament, the president may after consultation, with the respective commissions, etc; establish offices in the Public Services of the Government of Uganda. Secondly, Mr. Chairman, the basic duties and functions of The Central Government Representative or the District Representative Commissioner have already been given to the chairman. We have for example already given the Chairman of the district authority to coordinate the activities of the Central Government. With this, Mr. Chairman, I beg to move.

MR. BWAMBALE WALEMBA (Bukonzo County East): Thank you Mr. Chairman. I oppose the Motion. It is on record that, in Select Committee Four, one delegate wanted to have this article deleted. But after stripping the *'sigiri'* (CGR), of his

political powers, I feel we should entrench him or her in the new constitution. Mr. Chairman, I have the following reasons to oppose the motion. I feel that although we have decentralised powers, power corrupts and absolute power corrupts absolutely. In that effect, Mr. Chairman, I think that there is great need for a link between the Central and the local governments.

The second reason, Mr. Chairman, is that, in schedule number 4, under Article 214, we listed the functions and services preserved for the Central Government. There is also great need for coordination, monitoring and advice with regard to functions which shall be carried out by the Central Government.

A third reason, Mr. Chairman, is that, when we gave the functions and services preserved for Central Government, we were also aware that Local Governments will have residual functions through delegation of powers. And this one also calls for advice, from a neutral person from the centre. Mr. Chairman, article 207 Clause 1, talks of the District Chief executive who is the Chairman, and we have given this chairman, any important role as the political head of the district, which function was being misused by the CGRs. Now that we have removed this political role from the Central Government Representative, I feel we should have them entrenched in the New Constitution. I know Members who are in for the deletion, have been recalling circumstances which these CGR's have misused. For example, they have been connected with rigging of elections. Yes, I will give an example in 1980, during the general elections, by then, this function of political head was being carried out by the then District Commissioners. Elections were rigged in Kasese, and as if that was not enough, we even lost a prominent son of the district who was at the rank, of Assistant District Executive Secretary. More still, those people who are in for deletion may think that, the CGRs have been antagonising lower Local Governments, and in fact, I very much remember, during the recent CA elections, some CGRs went around, canvassing for some delegates, and to me, that was also very bad. Because, in Rukonzo, we have a proverb that, *'Omugheni syataba ngeku'*, Meaning that, if you are a visitor in the home, you cannot be entrusted with the responsibility of deciding which fire wood will keep the fire burning trans-night. So, now that, we have given these powers to the Chairman of the district, I very much oppose the deletion, let there be at least a Central Government Representative- *(laughter)*- to protect the interest of the Central Government. I thank you.

MR. LUKUMU (Bulisa County): Thank you Mr. Chairman. I oppose the abolition of the office of the CGR. Mr. Chairman, should this office be abolished, we shall be creating a situation which will make the management of affairs by the centre very difficult in future. Mr. Chairman, we envisage a situation where we shall have a pluralistic system of governance however distant it may be. In such a situation, where the centre may not trust the Chief executive in one district, who will be the chairman, representation of the centre becomes necessary. I think Mr. Chairman, in a situation of this nature, programmes of the Central Government are likely to be undermined. Mr. Chairman, we cannot say that, just because you are elected by the people, you cannot prove a problem to the centre. I need not dwell on this matter, because it is well known. Where you have got opposition parties, their aim in many cases, is to undermine or to fail the government in power. In such a situation, therefore, there would be a need to have a link, a trust worthy official appointed by the chief executive to ensure that, he remains in charge of the entire nation, even in areas where he does not have the people's support. Mr. Chairman, for a long time, even during the colonial period in Uganda here, we had district commissioners. These District Commissioners were representing the then Central Government which was the colonial power even where you had federal states like Buganda and Bunyoro and Toro. The centre, that is the colonial powers then, was always well incharge of the affairs of the state. In the case of Uganda today, where you expect frustrations anytime it would therefore be, most unrealistic of us to just leave the authority to only the elected governments without protecting the interests of the Centre. Mr. Chairman, with these views, I strongly oppose the abolition of the CGR to office of Resident Commissioner, hitherto known as CGR.

MR. KIGAYE-BILLYAWO (Budaka County): Thank you Mr. Chairman. I would like, first, to outline to the Assembly some areas in which CGRs have been useful. The CGRS have been a guide to the councils in every district. They have also served as advisers in areas of expenditure, and accountability of finances. I assure you that, in my experi-

ence, if we did not have CGRs who are foresighted in some districts, some of the district funds would have found their way, in areas other than development. In my district for example, the CGR has been connecting us to the centre. I would like to see the linkage between the districts and the centre continue. The centre should be in position to monitor what goes on in the districts, especially when we decentralise. Mr. Chairman, we are going to continue having, some projects in the districts, which are going to be funded from the centre, say the World Bank Projects and so on. We, therefore, need someone to represent the interests of the centre in the districts.

I would like to take an example of NURP. Right now in my district, if we did not have a good CGR, the implementation of NURP in Pallisa would have been very difficult and there would have been virtually nothing on the ground. I am also aware that, there have been conflicts of interest, between the Chairmen of the Districts and the CGRs. This has been because, the duties of both of them, had never been spelt out clearly. Now that we are defining the duties of the Chairman as a political head and elected, we need to entrench in the constitution and define clearly, what the CGR is going to do in the district? In my opinion, whatever you call him I do not mind, as long as we have somebody representing the interests of the government in every district. I will go along with the idea that, we should not actually, get away with this office. Mr. Chairman, I am a councillor, as well as a senior civil servant and a delegate *(Applause)*. Mr. Chairman, I would like to assure this Assembly that, normally the council looks at the civil servants in the districts, as people who do not matter. But in most cases conflicts that have existed between the councilors, and the heads of departments who are the civil servants in the districts, have in most cases been ironed out by the Central Government Representative. I beg that we maintain the link between the districts and the centre since we have given ourselves the mandate to recruit the Chief Executive of the district.If this Executive Officer was to be appointed and sent from the centre, I would second abolishing the office. But as long as the Chief Executive Officer and the Accounting Officer, is going to be appointed by the district service committees, let us have these Central Government Representatives. Mr. chairman, I oppose the deletion of this article.

THE CHAIRMAN: I have tried 2 and both are all opposition. Can I get those who support the Motion?

MR. OLWA BEN (Kole County): Mr. Chairman, I think we are developing a new culture in this constitution, a culture of transferring power to the people. In my own view, this culture should not be apparent, but real. We have already strengthened the power of the chairman, certainly, this culture is actually being carried forward. But, I now see, that by keeping the central government - in whatever name it is called, we are diluting the power of the people who have elected their chairman, to be the link of the people to the central government, directly through their chairman. I see, that the Resident representative, has actually no role to play in the district, in fact if we take the experiences from the current one which they call CGR, in my own view, they have been the best agents for confusing the districts and the centre. The best reward for them, would be to ensure they stop confusing the citizens of Uganda. Mr. Chairman, in the last elections, the aspirants became a subject of mistreatment by these CGRs, they were the source of rigging elections. We are trying to create a situation where elections shall not be rigged, but these people who work in this office, have not yet learnt the role of transparency, so they have been known for walking at night, confusing citizens, and actually bringing insecurity by labelling other people wrong elements. Mr. Chairman, I think we should not encourage them to do that. Worst of all, Mr. Chairman, the CGRs in the present form, have actually been making it very difficult for some civil servants to work. In the district where I come from, there has been a very high turn over of civil servants, and these were accused of being anti government. I think that is not right. Civil servants do their job to the best of their competence and they do not owe allegiance to anybody, but their professions. Mr. Chairman, in this new constitution, I really see no role for the CGRs in this place. The link to the people must go from the people to the Chairman, and directly and from the chairman, to the government. And government should ensure that, they establish their relationship with the people through their chairman. The presence of the CGR, Mr. Chairman, will only mean that, the Chairman, of the district will actually be undermined. Because the CGR will find his report against the Chairman, and we have just passed a resolution where, the president can take over district council authority.

The CGR in this case could actually initiate that possibility, bringing insecurity to the people. Mr. Chairman, my own view is that, the CGRs have no role to play any more in this new constitution, and their posts must be abolished. I therefore, support the Motion.

MR. ATWOMA (Chua County): Thank you Mr. Chairman. I stand to support the Motion. My reasons are, that the Resident District Commissioner, is a colonial mentality, whereby the colonialist did not trust natives of running their own affairs. And therefore, the representative of the governor of the Central Government had to be in the district, to mediate between the centre, the protectorate governor at that time, with the native administration. This has never been improved upon. And now, at this age of our political advancement, we are still dreaming of not trusting ourselves, even when the man at the centre is the son of Uganda, elected by the people of Uganda. When talking of this constitution, we should bear in mind, that after this constitution, we are going to have a government of the people elected by the people. And if the president is then elected by the people and entrusted with government, I do not see why the president should be suspicious of the electorate that empowered Mr. Chairman, in the 60s, we had the same sort of thing, but in the form of Secretaries Generals. I appeal to all delegates here to realise that Uganda has suffered a lot. We should not be creating or rubbing salt into the wounds. So Mr. Chairman, I beg to support this motion. It is for our good. Thank you.

MR. COSMAS ADYEBO(Kwania County): Thank you Mr. Chairman. I oppose the deletion of the CGR in this constitution. Mr. Chairman, let us avoid double standards. I am saying so because the role of the CGR here is not quite different from the role which the then District Commissioners took. The district commissioners by then were linkages between the central government and the local authorities. Their functions were alright. Now the CGRs are doing the same thing and some Ugandans are saying their functions are not alright. This is what I call double standards. As we are decentralising powers to the districts, it will be naive of us; it will be anti-people to completely de-link central government from performing. We should not think that good people only emerge from the districts and only bad ones remain at the centre. Central government has a historical role to play in the management of Uganda and will have to continue whether in future we are going to run Uganda on multiparty basis or not. We need the activities of central government to be coordinated regularly so that the decentralised districts will have to perform in accordance. Mr. Chairman, at the moment in Uganda, if you go round the 39 districts, if you see these developments all over Uganda, most of the achievements in the country in economic, social and administrative terms have been due to the tireless work of the CGRs all over the country. I am telling you, it is true and some Ugandans who are complaining or who claim that the CGRs are agents of confusion are themselves practising double standards. In fact some CGRs are more nationalistic than even the citizens in those districts. *(Interjections).* Yes, it is true. Some of the CGRs have done more work in the districts, more than even Hon. Members of the NRC prevailing from there; even mobilisation has been largely the work of the CGRs other than the Hon. Members who may be here. Mr. Chairman, it will be a very big mistake to delete the presence of the CGR in this constitution. We need the CGRS, they are the linkages, we need the CGRs they are our pride of peace and security and development in this country. We need these CGRs to stay because their function is not very different from the functions that have either been carried-by their predecessors whom we term the district commissioners. I am sure in future in Uganda, if the multiparties come back to the administration of Uganda, they are going to reinstate the district commissioners and they will be the linkages between central government in the districts. At that time, it will be alright. Please, let us put a constitution that will stay. Let us avoid having personal sentiments in the constitution. In this respect Mr. Chairman, I oppose the deletion of the CGRS. Thank you very much.

DR. OKULLO-EPAK(Oyam County): I thank you Mr. Chairman. I belong to committee four, in which I moved a motion for the creation of a post of regional Ministers to replace the position we are now discussing under the various names of the CGRs or Resident Commissioners. I still hold the view that the proliferation of 39 and what may end up being even more than 39 posts, with such minimal responsibility was a wastage, and I insist that to have 39 odd CGRs with all the equipment and facilities accorded them is not cost effective. The responsibilities and duties attached to this post do not warrant their existence in such numbers. Mr.

Chairman, in principle, one may wish to agree that there is need for government representation in the local areas but my concern is the sheer number compared to the duties that they are called upon to do. Further on the post is misplaced. It should not be in the section or chapter for local governments. If they are talking of a central government position, then this is the wrong place for it to be. Mr. Chairman, hon. Cosmas Adyebo has tried to compare this post to the district commissioners and he may wish to know that district commissioners were public servants appointed on permanent and pensionable terms, and they were transferable. They started as assistant secretaries and could end up being permanent secretaries. There is absolutely no comparison between the present post we are discussing and those of the district commissioners. The CGR has no minimum and maximum qualification. What does the CGR become in the hierarchy of promotions? From what position does one become a CGR? To whom is a CGR responsible? Mr. Chairman, I think it is very unfortunate for us to try to talk of double standards when you really do not know what you are talking about. Historically, this position, by whatever name known, has been controversial and their roles have varied from being dubious to antagonistic. In a multiparty system, this office is bound to become most destabilising. Mr. Chairman, we know that in the colonial days, this post was necessary because in those days, we had two parallel governments; colonial government and native government. The hierarchical structure for colonial government ran from London to Entebbe, to provinces and to districts. This is not the case today Mr. Chairman. When we retained this post after independence, we had several central government departments; sectoral departments and it was the duty of the-district commissioners to coordinate first and foremost, the central government units in the districts. With decentralisation, we have less and less central government departments in the district. So this position becomes absolutely unnecessary because most effective and important districts have been decentralised and they now fall under the responsibility of the chairmen of the districts. So this position will remain there to coordinate hardly any departments and the few departments that will remain deconcentrated to the districts can at best be directly coordinated and supervised from their Ministry headquarters. If we are talking about structural linkages, normally in situations where you have a decentralised unitary system, districts fall under the office responsible for Cabinet Affairs. This is not the model we have adopted in Uganda. In Uganda, we have adopted a model where we are going to retain the Ministry of Local Government. The most important political linkage between the government and the district administration therefore is the Minister responsible for Local Government whose various departments will supervise the work of the departments in the district. I think the Ministry of Local Government will have a very important office of inspector and that inspector, the inspectorate will accomplish most of the important technical requirements of the linkage between the central government and local government Mr. Chairman. Mr. Chairman, it is my view that there is need and I think it should be encouraged that there be a direct political linkage between the national chief executive and the local chief executive which linkage will be highly encumbered and barricaded by the existence of this position of district central government representative or resident commissioner Mr. Chairman. For this reason, I really find this position dubious and uncalled for particularly since it is misplaced in the chapter of local government Mr. Chairman. Mr. Chairman, I am aware of factual information on this matter. The officials that went gathering information at the time of making the local government forms were overwhelmingly informed by most district councils that they did not like this post.

Recently Mr. Chairman, the chairmen of RC 5s of eastern region met and one of the resolutions they passed - I do not have the newspaper report here, it was reported in the *New Vision* - one of their resolutions was against the position of this office, Mr. Chairman. Mr. Chairman, if they want power, I don't think they are wrong and that is the purpose why we are here. I am being told that they want power and I think what we have set here and articulated ably is that power should be sent to the people and if they want it and we have given it to them, why should we now with another hand want them not to enjoy it? Mr. Chairman, it is double standards to say that they are competing for power which power we have decided here constitutionally to give to them. Mr. Chairman, I strongly support the motion to delete this position particularly as a constitutional post and because it is misplaced in chapter thirteen on local government. I would rather go with a situation whereby this is left for future Parliament to decide with the President, The Executive as and when it is necessary. I support the motion Mr. Chairman. Thank you.

MR. KAGIMU: Thank you Mr. Chairman. I support the motion. In Luganda, we have a proverb, you cannot put two cocks in the same pot. That *ssegwanga bbiri tezibeera mu luwombo.* Experience has shown that there will be conflict between the CGR and the chairman. Mr. Chairman, we do not say that this office will not be there but what we are saying is that it should not be constitutionalised. As you can remember, 'when we were talking about the office of the commander-in-chief of the Armed Forces, we said that the President is the commander-in-chief. We are not saying that the army commander will not be there but not to constitutionalise the latter's office because there was bound to be conflict. Mr. Chairman, the behaviour of some of the CGRs is the cause of the outcry to have it abolished. As an Hon. Delegate has said, when multiparties come back, the situation will worsen because one party will send the CGR who belongs to it, although in the minority report, we were saying that Parliament will approve but still even if Parliament approves, if the President has managed to control that Parliament, he will make Parliament approve his people. The Local Government Statute of 1993, it is true, clearly outlines the role or duties of the CGR but most of them do not operate under the Statute. They instead are guided by their selfish interests. As you can remember, the first governments undermined the powers of their very local leaders they appointed. Today the CGRs are not different. They relish the old undemocratic tendencies of governors and secretary generals of past governments. They are in fact a destabilising factor in districts. The emphasis is not on political or economic development in districts especially in rural areas. They just go around with newspaper reporters covering their visits. Most of the CGRs are idle and redundant and a political liability. They are divisive and undemocratic in their actions. I do not say that all are bad but most of them are very undemocratic. So Mr. Chairman, since they have failed to grasp their roles and appreciate the virtues of team work and good governance they are an acrimonious phenomenon. The CGRs may exist but let us not include them in the Constitution because there is bound to be conflict again. This conflict has been there, and it will continue to be there. We should leave the chairman, the man who has been elected by the people be the head of the district and why can't the government work with the district chairman? Where then does a CGR come in? Definitely the CGR, though we have known or passed that this man or this woman will be under the chairman,who will take precedence, but knowing that he has been sent by the President, this envoy will still be powerful enough to show his might. Mr. Chairman, many Members may not agree with our motion, but history will stand to prove that we were correct. Thank you very much Mr. Chairman.

MRS. MASIKO(Women Delagate-Rukungiri): Thank you Mr. Chairman. I oppose this deletion. Mr. Chairman, I would like to remind Members of this august House especially those who would like the CGRs to be removed to know that already in the constitution, we have passed that the District Service Committee is to appoint the Chief Administrative Officer and at the same time, we have already said that the Chairman of the district may be elected by universal adult suffrage. Mr. Chairman, this means that we are not going to have a link with the centre at all, because we no longer have this Service Commission appointing some of these DESs. So, since we do not have that, we should make sure that at least we keep the centre linked with local governments. Mr. Chairman, under decentralisation, we are not saying that these districts should secede. We are going to be different districts but connected to the centre. So the moment we remove this CGR, it means that we are going to break the cord and once we break this cord, we shall not have harmony as different districts in this country. Mr. Chairman, I have heard people saying that when the multiparty system comes in place it is going to be difficult to operate. I believe that it is very difficult to have a multiparty system in our country working very well if we do not have the ruling party with its representatives in districts. I want to bring about a scenario whereby we might find that some districts do not support the ruling party. It is going to be very hard for any government to run the country when some districts do not support the party in power. So on that note I think in the multiparty system, we need the ruling powers to have their representatives in different districts so that it can harmonise its position in the development and administration of the country. Mr. Chairman, I on would like to say that we should not make a constitution basing on sentiments. Certainly most of us may have had it rough during the campaigns when you were not supported by the central government representatives. You should realise that although you were not supported someone else was, but remember we are not making this constitution for ourselves as individuals. We are making it for everybody in the

country. I oppose the deletion of this because it is going to be very disastrous if we do not have a link with the centre. Mr. Chairman, it is not wise to say that these are two different cocks in the same pot. The central government representative is very different from the chief administrative officer and is very different from the chairman of the district according to what we have already formulated in this constitution. With those few points Mr. Chairman, I oppose the deletion in this article. Thank you.

MRS. BIKORWENDA(Women Delegate - Bundibugyo): Thank you Mr. Chairman. I oppose the deletion of the CGRS. I have these remarks to make. It does not matter who is in leadership. We are making a constitution to stay for future generations. Therefore, we should make something that will stand the test of time. There is need for the President of the day to have representatives in different districts of the country. There should be easy link between the centre and the district. They will also help to keep the people mobilised politically. Are we trying to say that we are transferring all the responsibilities by creating decentralisation to the Ministry of Local Government as one hon. Member has said? I do not remember ever going to the Minister for Local Government on a question of energy, telecommunication or what have you. Every Ministry must exist. Mr. Chairman, we should blame our chairmen, deputy chairmen, we are going to elect if divide and rule existed in the district. Here we have already given precedence over the Presidential nominees to the chairman of the district. If anything happens to you as a particular politician or anybody in the district, we should not blame the appointee of the President. It should be upon you. After all even these people breed their divided factors. If we are to be united, I do not see how a foreigner would come in and divide you up. So what we are saying, after creating room for a district vice chairman, we will now be busy thinking of who is going to be that person. Who is going to be above the subject of a Presidential nominee and we create unity in the district. Mr. Chairman, unless we are creating independent self sustaining states socially, economically and more strongly politically, Mr. Chairman, we need a healthy and disciplined environment that will stand the test of all the political differences in future in a situation which might come later about the multiparties. We cannot leave some districts unguarded by the President simply because we have got different political beliefs and I therefore appeal to hon. Members, please, reject this dangerous situation. I heard from Hon. Okulo Epak still talking of the regional representations. I thought we gave it a very good ceremonial burial in the committee four. We gave it a very decent burial and I thought he h ad forgotten about it. But now here he comes back with it! Surely a person like me from Bundibugyo, I am worried. If now we go to Bunyoro, Kabarole, Kasese or where, this good man might never come to Bundibugyo because of the bad road, but when someone is appointed to be in that district, he will always be there under a very strong chairman. I am therefore saying Mr. Chairman, please hon. Members, let us not take this dangerous situation. I lastly beg you Mr. Chairman, to put a motion to vote.

THE CHAIRMAN: Okay, I will have two speakers, one for and one against. The motion is that we delete 223.

PROF. NSIBAMBI(Presidential Nominee): I thank you Mr. Chairman. I think there are a number of Colleagues who have misunderstood Hon. Sabiiti. Hon. Sabiiti is not saying that the post should be abolished. What he is saying is that we should not constitutionalise the existence. *(Applause).* That arrangement gives us flexibility knowing what is happening now. It would be unwise obviously to abolish that post now. The boundaries are still fluid and the security at the border is assured, the security organs which are trying their best to deal with the situation sometimes suffer from information distortion. So the Head of State is not assured of accurate and independent information. Furthermore, the state of the districts in the remote parts of Uganda is also poor. There is a lot of poverty and it is difficult to get accurate information under those difficult circumstances. So we all agreed that we need that post and it would be most unwise to abolish it, especially now when we have just gone through a state of civil war. I want to make that absolutely clear. But the question is, for how long? That is what we are debating and we are saying that when you constitutionalise it, you lose the flexibility of removing it when it is no longer pertinent and we are now trying to empower people in such a way that we shall be abolishing some of these posts as we improve because that is our goal. So, we are saying, do not constitutionalise it but you can still have that post because it is useful at the moment. It is still useful but when time comes for abolishing it,

it will not be necessary to have a constitutional amendment because it is expensive. So when that time arrives and we are looking for to that time to arrive because we want to empower people, because we want to ensure that there is accountability, maximum accountability at the local level and want to ensure that the elected peoples are not overshadowed by the President's representatives, we want to create that flexibility so that we do not encumber ourselves unduly. So I support the motion because it gives us flexibility to remove this post when it is nolonger serving the public. I thank you.

MRS. WANDIRA KAZIBWE (Kigulu County): Thank you Mr. Chairman. Like we keep on reminding ourselves in this Assembly, we say that we want to make a constitution that will bind us as Ugandans, but at the same time help each of us to be empowered individually as a community and eventually as a country. Mr. Chairman, one of the reasons why this Assembly rejected the idea of regionalism is because it is difficult to empower people and to reach them at a community level if we talk about big regions at this time when we are putting one brick upon a brick to build the country. Building an institution is not easy and I want to urge hon. Members as we sit here that let us not think that because we had a sour marriage, we should not encourage others to wed. There is nobody who has even had a divorce who encourages his son or daughter not to get married. In fact on the wedding day he invites his divorced wife to give a good image to the creation of this new family. Sometimes we sit here and we use our past sour experiences as individuals and we forget to relate to the good experiences that others have got. Indeed Mr. Chairman, if we are only to put structures in the constitution, that have been good and take out those that have been a bitter experience to others, we should have not even said we have a President in this constitution since we had bad experiences with the likes of Idi Amin and for many of us, the likes of Milton Obote. Why have we constitutionalised that? Mr. Chairman, we are here to revolutionalise the thinking of everybody. We are here not only polish what is in place but to move ahead and think of new good things, improve on what would otherwise have been good enough to help the country move ahead. We have indeed given federal at the district level. We have empowered the district chairman to get his cabinet, we have empowered the district council to have committees to run affairs of the district as we have indeed done in the fourth schedule. There are areas where we have actually left programmes to continue in the district which are to be coordinated nationally. Mr. Chairman, if we have this district Chairman, the President of the district, his Cabinet, these are the secretaries, that this is the empire you are going to handle. Whom are we charging in the district with the duty of convening the district organ concerned with security so that we do not get uncoordinated information? Who is going to be charged with the duty of handling immigration in Bundibugyo, in Kitgum, in Arua, in Nebbi? While we sit here and say the immigration officer will do (a), (b), (c), (d), but many of these elements that we have left for the centre whether we like it or not do not only have executive or tinge administrative function but they also have a political tinge to them. How are we going to keep Uganda together if we want to separate bricks and instead attach them with a loose string and we think that this President who is going to be in the centre is going to be better than Jesus, better than nabbi Mohammed, better than all the prophets that have come to this earth and that he or she will pull the country together? There must be a functional relationship between the districts and the centre. What really causes friction is because individuals are not personally empowered. If you know that this representative from the centre is going to overshadow you as a chairman, do not go to stand in the district. If you think you are not strong enough to really manage the affairs of the district and you will be overshadowed by somebody who is coordinating activities at the centre, you are even going to rub off that inferiority complex to the people in the district.

Mr. Chairman, as we talk now, we have constitutionalised the district chair but as we talk, there are many districts where the chairmen are even worse than the CGRS. Are we going to say that because such and such a chairman is not good, such and such a chairman did not support me in the CA campaign? Mine in Iganga District did not support me but I work with him. These are not personal jobs. We are here to serve the people and we are here to put in place structures that will make sure that services reach the people, that security is ensured for the people in the whole country. Mr. Chairman, I would like to see another functional linkage between the district chairmen and the centre because if you have only one road leading to Rome where my Pope is you will have a problem. I would like to see something like a council insti-

tuted where these chairmen meet to compare what is happening in the districts at their level and we create that forum in the form of a district council where they will meet their President regularly, not only as friends, not only because the President has given an appointment but because it is also constitutionalised and the President must meet these people in this council. So Mr. Chairman, I believe that many people here do not agree that we should do away with a central government representatives, whatever name we give him or her. The issue is, should it go to the constitution or not? I want to assure you that even legally, it is better to go to church, to go to the mosque, you get your marriage certificate and when the divorce comes, you know the clear terms relating to that marriage instead of leaving it for this love relationship where Members here say, we are in love with the CGR, that we shall get married to him when the time comes. Let us put this person here, who is going to link us with the district as a true federal unit so that at the end of the day when we come to divorce, we shall know in Parliament, within the provisions of changing anything in this constitution that actually the time is ripe for marriage or for divorce and we shall move from there. So I strongly oppose the deletion of the CGR from the constitution. Thank you.

THE CHAIRMAN: Now I want to put the question. Let us determine this one. The motion is by hon. Sabiiti that article 223 or 220 in the draft but as recommended 223 be deleted. I would like to put the question.

(Question put and negatived).

THE CHAIRMAN: I see about 20 Members standing up. They are being counted. There were 36 Members standing. We need 51, so please resume your seats. Now we have a motion. There was one by Hon. Maliro. That one seeks to set out the functions of the CGR or the Resident Commissioner. Hon. Tinyefuza, do you still want to take the Floor?

MAJ. GEN. TINYEFUZA(NRA Delegate): Yes, Mr. Chairman if you can give me the opportunity.

THE CHAIRMAN: Okay, go ahead.

MAJ. GEN. TINYEFUZA: Mr. Chairman, noting what we have just determined in the previous voting, I think that it is generally agreed that there is need to have a linkage between the centre and the local governments and I do not think that there is a lot of opposition to this concept. But my problem is that, at what level should this linkage be? What should be the level of the coordinating officer? Mr. Chairman, I find these districts a little bit too small for purposes of a central representative dealing with an elected RC 5 chairman by adult universal suffrage. Mr. Chairman, some of the duties really entrusted to a CGR is mobilisation although some Members are saying in the new provision we are removing mobilisation duties from the CGR. It is very difficult to take away mobilisation capacity of a CGR or whatever name you may give him; because this is a person - even when you look at...

THE CHAIRMAN: Hon. Tinyefuza, you have made some lengthy remarks.

MAJ.GEN. TINYEFUZA: Okay, can I move the amendment Mr. Chairman? I would like to move an amendment to the effect that there shall be for each region as may be determined by Parliament, a regional government representative appointed by the President with the approval of Parliament. I beg to move Mr. Chairman Sir.

THE CHAIRMAN: Is it seconded?

HON. DELEGATES: Yes.

THE CHAIRMAN: It has been seconded. Okay, Hon. Tinyefuza, could you finalise your remarks. Order! I took his motion first because it departs further than the one by Hon. Gaston Maliro which is talking about the same but only setting out the functions. So it will depend on how we proceed with this one.

MAJ. GEN. TINYEFUZA: Thank you Mr. Chairman. I appeal to Members of the House to - let us sort out our focus because the idea of regionalism tends to excite people. Now this is a different concept and I would appeal to Members to listen to me. When we are talking about regionalism, the one which was previously defeated, this was regionalism vis-a-vis local governments. Local governments cooperating or decentralising power to the regional level. Now I am talking about region-

alism vis-a-vis central government. The two are different. To date regionalism with central government does operate. The police force operates on regional basis, the army operates on a regional basis, Ministry of Works operates on regional basis, I will go on, even Justice Ministry, Northern Uganda Reconstruction is on a regional basis, the Teso Commission is on regional basis, if you go on and on. So, therefore, region as a matter of principle of central government does operate today and this is the region I am talking about. Therefore it should not be confused with the region of local government of federal. I beg you to understand me on that issue. I find that when you get a person who has been elected by universal adult suffrage, he is on a different mandate and here you bring the CGR in the district who may be really representing a different mandate politically. Now if the mobilisation capacity of this CGR in the district is different from an elected representative of the people, I do not know how smooth their relationship and working capacity will be! So what has tended to be the case right now is for these officers getting entangled in the local politics of these small areas. You can imagine Kalangala as it is! Having two kings in Kalangala is like having two kings in one uniport as one gentleman once said. This is a small thing but if we had a regional representative sitting maybe in Masaka, looking after even Mpigi and after Masaka and after Kalangala, he can have his own small representatives who do not have the capacity to interfere with the runnings of the districts. But this regional man will be qualitatively better, he will even have the qualifications required. Because today, we h ave some CGRs who are - their qualifications are between P.1 and P.3. Now this is a very high level of education but I find it a little bit disturbing but I will find it very difficult to believe that we are going to have a regional representative who is a P.1 graduate. It is absolutely unlikely. Of course Amin did it but I do not think we are legislating for the Amins because the Amins will not come here constitutionally and I think the will be resisted. So Mr. Chairman, I think that regional representation ultimately will not only solve conflicts in the districts but it will even reduce on the expenditure. Mr. Chairman, today, people who work in the Secretariat, if they know how much money spent on CGRs for duplicity of work really, work which would have been done by one regional representative coordinating the RC 5 chairmen who are elected by the people, I think even this one is not necessary Mr. Chairman. Today we have had a regional Minister for the last I do not know how m any years, hon. Betty Bigombe in the North. I think everybody does commend the work she h as done and this person has not collided with any group. We have had the same person, the Minister for Luwero and the Minister for Luwero *(Interruptions)*-Mr. Chairman, let me finish. If you look at the Minister for Luwero, there is something in this amendment which I have deliberately introduced. I have said, a region as may be determined by Parliament, so much so that - in fact we can even go on if we decide that these fellows are representatives of the executive, let these regions be determined by the executive. I do not mind, so that the e executive or Parliament as the house may deem fit, can even declare for purposes of central government coordination that Bundibugyo is a region for this purpose, that Karamoja is a region for this purpose depending on the circumstances prevailing at the time; so that I am not really taking away or saying these other regions, central, north, east, no, I am not referring to that as Parliament may determine from time to time or as the executive may determine according to the prevailing situation. So Mr. Chairman, to conclude my remarks, I think that to lessen the conflict between these local entities, let us widen for purposes of coordination for central government, the fields of operation, the jurisdiction should be wider, these fellows will be more qualified and definitely the focus will nolonger be on the local political problems of the small entities but it will be wider in focus. Therefore Mr. Chairman, I beg the Members to look at the merits of this amendment really in the light of its well intended purpose and do not mix it up really with the federal issue. I beg to move Mr. Chairman Sir. Thank you very much.

PROF.DANI .WADADA.NABUDERE (Budadiri West): Thank you Mr. Chairman. The debate we just concluded has shown that there is need for a link between the centre and the local government units that we are setting up. I voted against the idea of having a central government representative but I am now convinced that there is need for such an official. Mr. Chairman, the question we are discussing now which has been raised by hon. David Tinyefuza is that at what level should we have this representative. I am convinced that the region as determined by Parliament or by the President will be a better idea than the district for the following reasons: It will remove the immediate power struggle between the central Govern-

ment representative and the chairman of the district. I have seen this visibly in my own district, Mbale where even a deputy CGR tries to overwhelm the position of the chairman of the district. It will therefore make it easier to remove this immediate political power competition and conflict that arises there from. Secondly, it will solve the problem of who takes precedence over who. We have said in an earlier ammendment that the chairman of the district will take precedence over all officials in the district. If we have a regional official, a resident representative who is in fact in the nature of a Minister, solve the problem because he will not be seen as an immediate competitor in a particular area since he will be seen as someone moving regularly from place to place to see what is going on and he will be welcome in the areas where he goes instead of being seen as an immediate competitor. Thirdly, it will create a more harmonious atmosphere between the locally elected representatives in the district and central government. And therefore, the representation of the President on the executive will be more effective. Fourth, as has been said by Hon. Tinyefuza, it will reduce the expenses that are incurred administratively through having too many officers. It is possible under hon. Tinyefuza's proposal to have even ten regions. It is not necessarily the four regions that we are talking about. So it is a flexible way in which the central government can be represented without creating the problems that we are talking about. Mr. Chairman, I beg to support the motion moved by Hon. Tinyefuza.

DR. WANDIRA KAZIBWE: Point of clarification Mr. Chairman. I have a problem which I would like the mover to clarify. I appreciate his fears but then I also know that in some instances you may find that something is very small, yet with a problem just like he has elaborated in his submission. I wonder whether a situation could arise where a district may actually be forgotten as not to get a commissioner from the centre and it becomes limbo. I need the clarification from him on how each district can feel that there is somebody from the centre, whether it shares this person with another district or not, because in the constitution, we say there shall be for each district a commissioner appointed by the President with the approval of Parliament. It is for Parliament then to determine all these issues from time to time instead of saying that we shall have a region yet some districts, even on their own, may have peculiar problems which will actually need the commissioner appointed to this district instead of a region.

MAJ.GEN. TINYEFUZA: Mr. Chairman, I could answer that clarification by the delegate from Kigulu South. Mr. Chairman, I do appreciate that scenario but I think that has been solved even during colonial days, although we had eastern region as such, but Karamoja used to have special administrators because of its peculiar circumstances and I think that worry has been taken care of by giving the executive or Parliament as we may decide here the power to determine that although this regional representative represents these areas, but that area, which because of its geographical location or its social programmes of problems need specific person and for purposes of this article that district, whichever it may be shall be treated as a region itself. There is no conflict really. The executive has the power, the Parliament has power to say although there is a representative in Kasese, for Kabarole, Bundibugyo, Ntungamo or whatever, but due to the terrain of Bundibugyo, Bundibugyo shall have a resident representative directly. So it is up to the executive or Parliament of the day in its own wisdom to determine this.

LT .COL KIIZA BESIGYE(NRA Delegate): Thank you Mr. Chairman. As the debate on this subject progresses, I seem to find that there are common fears which have been expressed both by the movers seeking deletion and now the mover seeking a different level of central government representation. And the areas of concern which have been expressed, I find are one, on the question of power struggle between the district chairman and this person who is coming from the centre. In fact I am also confused and I think maybe the chairman of the committee or some other Hon. delegate may at a later time clarify to me, whether our earlier provision that the district chairman shall take precedence over all officials of the district includes this CGR and I think this is indeed based on the experience we have had so far. I have had the duty, I would not like to characterise it of superintending over these Central Government Representatives or DAs as they were then called and I must also indicate that there is need for creating some kind of standardisation in the basic qualification of such persons, because it may lead to even discontent in areas where somebody is sent for political reasons, may be, but who is clearly incompetent and therefore, leads to the deterioration of

services in a particular district compared to another district which gets somebody who is competent and who therefore helps that district to advance. Now, I of course realise that in Clause 1, we are saying it should be with the approval of Parliament which may help in bringing that kind of control over qualification. But this coupled with the other point which has raised concern, that is of political bias; because members are saying, that this man being a representative of the President, in the district, may have political views which are actually different from the political views of the leadership of the district; and that this therefore, inherently creates political conflict actually. One is advancing the views of political views which are not shared by the leadership of the district and mark you, one of the duties of the Central Government which we have given, is that of elections - elections both of national and Local Governments, is the responsibility of Central Government and we therefore saying that now, this man who will be coordinating that function in the district, will also be coordinating that function of elections in the district whereby, in doing so, he is also already coming with political bias, because he is a political appointment by political authority. If he is going to superintend over elections in the district, especially in districts where his political views are different from those of the district leadership, I can clearly see an area of battle arising in the district over this function. I therefore do not Mr. Chairman, know whether once one looks at this question of qualifications and of political biasness of the official which may lead to inherent conflict; whether it may not be a good idea to look at the possibility of having the Central Government Representative reverting to a Civil service role; because the Civil Servant at least has security of tenure which we have embedded somewhere. He may therefore be able to exercise the independence of mind and judgment and to resist political pressure; he may - he would also inherently be veted in terms of qualification so that they some kind of equal qualification.

I depart from the views expressed by hon. Tinyefuza who seems to think that there is no adequate work for this person in the district. I think the role we have given to the Central Government Representative in the district is a lot of work which needs that kind of coordination, all these policies which listed - 29 functions. I think there is a lot of work and if we sorted out these areas of concern, possibly hon. Tinyefuza and his supporters and then Hon. Jack Sabiiti and his supporters may come back to the idea of having, a linkage at the district, but with these kind of checks, whereby the question of precedence is clearly defined, as regard this Central Government Representative and secondly, the question of qualification and avoidance of political bias in the performance of the Central Government duties in the district. Therefore, Mr. Chairman I am just raising these points partly seeking clarification as I said from the Committee or other members on the question of precedence and partly floating the idea that may be, we consider the possibility of posting a civil servant instead, civil servants in any case, are only appointed by a Public Service Commission, but they are posted by the President or by the Minister. Therefore, in posting these people, you can also post them to take care of the various interests of the Central Government that you may wish to have taken care of. But it will definitely give the protection of the district against undue pressures and interference of a political nature at the district, which would have no check at all if this person was an outright politician coming to superintend over the duties of the district. I thank you Mr. Chairman and I hope that members will help me as we go along.

MR. CHEBET MAIKUT (KWEEN COUNTY): Thank you Mr. Chairman. I also wish to join my Colleagues to oppose the Motion moved by Hon. Tinyefuza. First of all, I am perplexed that the Hon. Mover of this Motion is one such Hon. Member who has been crying and fighting for the separate district of Sembabule and his reasoning was that, power must be taken nearer to the people, not just in Masaka. Now, the Hon. Member comes here to turn round about, a U turn and says we should create another kind of power centre at the regional level and yet Mr. Chairman, when we were discussing Article 201, and to take you back - when we were, having our general debate, it was a cry of many Hon. Delegates here, that the power should be taken nearer to the people, not being just somewhere far as at the centre or at a regional level and these were some of the arguments which were used when we were having the federo debate here; that it is prudent and the wish of most Ugandans in this country to have power as near as possible to their own citizens. Now, Mr. Chairman *(Interruption)*

THE CHAIRMAN: No, we shall find time for you to take the Floor, otherwise, I think we should let the members ...

MR. CHEBET MAIKUT: Mr. Chairman, when we were discussing 4th Schedule, Article 214, we did not recognise that some functions and services have got to be reserved for the Central Government and that there was therefore need for the Central Government to deploy staff or Personnel to run those services; and the Motion which we have just thrown out, a few moments ago by Hon. Sabiiti, was a submission of many hon. delegates here that there was need to have the Central Government Representative to link the centre and the districts and therefore in the same tone, it was reckoned through some arguments here, that there is need to have one officer to coordinate the services of the Central Government in a particular district. Mr. Chairman, I would like to give you an example. In 19 - around 61, I think Mr. Chairman, you are in a better position to know this, when Kapchorwa district was fighting for its autonomy from Mbale district. The then Governor of Uganda posted somebody, a muzungu as Assistant District Commissioner. What happened in Kapchorwa was that, the leadership of the district by then, had to put a very huge stone and some logs to block the road on condition that the district will only recognise a person who is full as a Commissioner posted to the District as a District Commissioner, not a small one as Assistant District Commissioner and therefore, in the same tone, I have heard so many colleagues from Kalaki, from is it Terego, Kitagwenda, everybody has been crying for the need to extend services as near as possible to the local people. Therefore, in that respect Mr. Chairman, I wish to suggest that the work that is reserved or that is going to be provided for the Central Government Representatives is crucial and important; we are to provide for him Constitutionally. So, Mr. Chairman, I would like therefore to urge hon. Delegates to strongly to agree to have a Central Government Representative or District Commissioner if you wish to call it so at a district level. Some time we have been hearing about people who are calling themselves widows and widowers, we had cases where we used to have administrators based at one district level, those days when we used to have a region and some body can take even five years without the boss of that district,if he was a Governor, or regional somebody without visiting certain districts within his or her own jurisdiction. So, with those few remarks, Mr. Chairman, I would like to oppose very vehemently the Motion moved by hon. Tinyefuza and urge him that his people in Sembabule require the services closer to Sembabule not based in Masaka. Thank you very much, Mr. Chairman.

MISS. BYANYIMA (MBARARA MUNICIPALITY): Thank you very much. Mr. Chairman. I was initially attracted to Hon. Tinyefunza's ammendment because I am one of those people who did not want the office of the Central Government Representative for various reasons that I will not give here. But eventually, after being persuaded, that there is need for that office, for certain functions, I was convinced on condition that we will prescribe those functions here in the Constitution and not anywhere else. Mr. Chairman, officers in those offices, have behaved in such a way that it is even so hard to descend the office, not because of their characters but because the office was not well conceived and the functions were not well articulated. The officers were also not well chosen, for precise qualifications for the jobs, and hence, in trying to define their own roles, and in trying to martial any capability they have, coupled with their lack of training for the job, they have been the nuisance that they have been. I, now think that Hon. Tinyefuza's Amendment, will compound the problem instead of solving it, because I reflect on one CGR who I have in mind and will not even mention, and who is already a problem in one district and I imagine what he would become when given say five districts. God help those five districts; because Mr. Chairman, he will move around with his walking stick and his voice trying to be authoritative, all he needs is a round hut to look like colonial DC, and he will try to meet these five district Chairmen, his subordinates, he will summon them to meetings, he will try to tell them what to do, he will be more of a nuisance with a regional office than with a district office. So, I do not think that Hon. Tinyefuza's solution is a solution therefore. The solution I would rather go back to is what Hon. Kiiza Besigye was saying, how to remove the conflict between himself and the district authorities and I think the problem starts here, we have been trying to say, that the CGR is a linkage between Local Government and Central Government, fine. He is a linkage, but what we forget is that, he is not the only linkage, we have to define the Local Government and the Central Government with a relationship and the CGR is not the embodiment of that relationship. He has to find his place within this relationship, we have tried to say that he can mediate between Local Government and Central Government. What capacity has he got to be a conflict resolution mechanism? This man with his double Pick-Up, suppose he comes, he cannot be a mechanism for conflict resolution between the centre and the local, we have

to think clearly what this mechanism should be and may be how we can also fit in that mechanism; besides, this relationship is a separation of powers, a check and balance. So, he must fall in place within this check and balance, we must not look at him as the person who will whip the Local Government to support the Central Government; I think that is a misconception. Then again, he is the representative of the President, that seems to be the view that we have here, but again, Central Government is not the President they are not synonymous, we have to think about who this person reports to, and how he relates to the whole of Central Government, I think we have not done that, we are looking at him as a Representative of the President and that is where you get into problems, how can he be in charge of elections when he reports to an elective office also? He will be serving an elective office which has interest in elections, in the Local areas, for he cannot be responsible for elections. That is why in fact, in the last elections, it was so right to make the District Executive Secretaries take charge, but it did not stop them interfering and in my case, Mr. Chairman, and I can tell you, the man meddled, but I still was able to defeat and you see me here. But Mr. Chairman, what I am trying to say, is that, by being responsible to an elected official, the President, he cannot take charge in certain functions of Central Government like elections. SO, let us think more thoroughly about his function, it is the wish of most us here to have him, but let us think more seriously about the functions that this man must have and this question of putting him at a region is not going to resolve the problem. So, MR. Chairman, i oppose hon. Tinyefuza's Amendment and I hope he will recognise me again when he comes to defining the functions. Thank you Mr. Chairman.

MR. MALINGA (USUK COUNTY): Mr. Chairman, it seems the mood of the Assembly is that we want this person. The question we should clearly answer in our minds, is this. We say we want somebody to represent the Central Government at the District level, that is what our vote here so far says. Not so? Now, the question is, what kind of representative do we need to represent the Government at the district. The question we have to answer, is, do we need to have that representation in the person of a political appointee? If it is a political appointee, then the question of qualifications does not arise, because with a political appointee, the only thing is, allegiance to the political authority. We have to clearly decide on this. If we want to put the representative of the Central Government, as a political appointee, then let us write these things here. If on the other hand, we want to have a public servant to represent the Central Government at the district, then we do not need to have these things here, because Article 196 of the Constitution which we have already passed, provides that the Government can take as many public offices as necessary to discharge its functions and it can appoint one public officer and post him to the district as its representative at the district. Now, hon. delegates, we have been discussing what is now Schedule 4, that is the responsibilities of the Central Government Now, among the things that we have recircled the Central Government is conducting national and local elections and as hon. Byanyima has just said, that it would be horrid for us to entrust the conducting of elections to a political appointee. This is a matter we must condemn and then, we must define clearly if we must write here, the duties of this person. But if it is a pubic servant, I would invite you that we should not write it in this Constitution. We should leave it to the Government of the day to appoint officers and name their posting instructions, they will be clearly given, what they will to say. But if we are making it a political appointee, which I would implore members not to take, because a political appointee, there are no qualifications, the only qualification is, have you caught the eye of the appointing authority? That is all. It does not matter whether you know A, B, C D, or not, we have had Ministers in this country who have never known how to spell their own names. On the other hand, we have had Ph.D. Holders as Ministers. That is just the possibilities in the realm of politics. But what we need here is, that we have this representative of Government departments and you post him there to coordinate those people, this political appointee, who only knows the road from his house to State House, he has never been to any school of training, he has no discipline, how can he command respect of those Government departments which he is supposed to coordinate. This is a question we should address our selves, is the qualification of this person and because we cannot write for all times, I would implore that we elect this representative of the Central Government a public servant, in which case, Public Service will from time to time re-write the necessary qualifications for this job when they are being advertised. Hon. delegates, I propose that if we have got to say anything at all about the representative of the Central Government here, it

should be that there will be a Public servant posted to the district to represent the Central Government, but he should be a public servant and if - *(Interruption)*

THE CHAIRMAN: But Hon. Malinga, I think the question is, should he be at the regional level or at the district level. I take it that you oppose that Motion.

MR. MALINGA: I am not buying it in whole; this regional arrangement, because of the fact that you constantly get some areas asking for special consideration; we have already heard the case of Sebei that they may do it again - create a road Block going up the Mountains -if they are not given a full District. So, I would suggest that, we think of a representative at the district, but then spell out what kind of person we should have at the district. To that extent, I agree that he be at a district not at a region. Thank you.

MR. RUZINDANA (RUHAMA COUNTY): Thank you Mr. Chairman. Mr. Chairman, I do not think it the Central Government Representative should be at a regional level, because we have we have not created a region yet in this Constitution and until we do so, there seems to exist no power at that level. Now, it would be a bit of a problem to create this Central Government Representative in a vacuum of power. The Mover of the motion has given examples of some departments like the Police. But the Regional Police Commander has actually got less power than a District Police Commander. The funds available to a Regional Police Commander are very minimal, the funds go to the District Police Commander. The other departments like the Army and so on, do create lower levels of command unless you are assuming that this Regional or Central Government representative will also have District representatives then this person will be a person who has no power, who is completely emasculated and cannot effectively represent Central Governments. Secondly, Mr. Chairman, there are arguments that this official should not be a political appointee, but a civil servant. If you get a civil servant then you merge the position of current CGR with DES, if you merge those positions, then the Chairman can no longer be supreme at a district level. You will undermine the district Chairman if you merge CGR and DES and therefore, I do not think they should actually be merged. There are also other duties he is being given like elections and so on. There will be an electoral commission, there is no way a CGR or Central Government Representative will actually at the same time supervise elections, he can only make reports about the conduct of elections to the Central Government, but he cannot supervise them; that is not his role and it will never be his role, unless we do not create an electoral commission. Therefore, all arguments that remove this official from the district where power lies, are arguments that are designed to emasculate this office and therefore, are in a way also in a round about way trying to abolish the office without saying so. If we are serious about this office, let it be where there are functions. We know we are leaving certain functions to the Central Government; these functions will be carried out at district level and it should be at that point, at that level, that this official should be located. You locate him elsewhere, you are also going to confuse the problem of precedence. If you have a regional official, he obviously must take precedence over the district official of all levels whenever he is in that district. You even make it worse when you make him a Minister, make her or him a Minister, a Resident Minister, a Regional Minister, the Chairmen at district level, the decentralisation policy, the evolution of power we have decided upon will be undermined by locating this official at higher level than the district. At a district level, the question of precedence is clear, Chairman is takes precedence in matters concerning the district. If there are national matters for example, Independence Day, then the Central Government Representative will take precedence, because that is a national function. Now, the problem which has already been pointed out is about defining the roles and the functions of all these offices. I do not think it is appropriate to define the functions here in the Constitution we should leave it to Parliament, because these functions will be changing over time and that should be clear, but we should say that Parliament should define the function and role of this official. Therefore, Mr. Chairman, I oppose the Motion to locate the Central Government Representative at a regional level. Thank you Mr. Chairman.

THE CHAIRMAN: I would like those who are going to speak for the Motion that we have a regional CGR.

MR. MULINDWA BIRIMUMASO (BUKOTO WEST): Thank you Mr. Chairman. Mr. Chairman, I support the Motion as moved by Hon. David Tinyefuza. I have been here listening to so many

people. I think we are still having some phobias around when some one mentions about a region, then someone thinks it is federo, I think this is terrible! Mr. Chairman, the intent of decentralisation is to take as much as possible power to the people, this is loosening Government control. We are trying to make sure that there is less control, less interference by the Central Government and maximum involvement by the Local Government. Secondly, we should define the jobs of these people; you cannot compare the district Chairman and the Executive to the role of the CGR. It is like the Local Government is going to clear 100 acres, it may require 30 days, but the CGR to see that the 100 acres have been cleared, does not require those days. So, to make the CGR day to day, with the Chairman, that is why we are having these conflicts; the role of this CGR is minimal. Actually, the duties that have been assigned to him cannot keep him on the day-today basis. That is why we find he will interfere with the district. But if he can coordinate at the regional level, then he can be having some work to occupy him.

Hon. Chebet Maikut was confusing when he said that the CGR must be at the district as a means of giving the people power. But I think that is not the case. When we give the power to the people, we are not creating another power centre for the CGR. If you have a competent Chairman, you will find that the CGR's work is not there. If you have a competent Chairman, who knows what he is supposed to do, you will find that the CGR is redundant, because all, this, the creation of the CGR, I think is even a mistrust of the Chairmen to an extent. If the Chairman knows what he is supposed to do, he is the one who is most capable of mobilising these districts and even seeing projects to be implemented. The CGR will have little work! Mr. Chairman, I would beg some members who hear the word regionalism and they think it is federo or something else, to sit down and be sober-minded, and look at this issue independent of emotions. Thank you.

THE CHAIRMAN: Another one for the Motion. Hon. Serwanga Lwanga.

LT. COL SSERWANGA LWANGA(NRA DELEGATE): Thank you Mr. Chairman. I support the Motion moved by Hon. Tinyefuza. The intention of this Motion is to diffuse conflict between the current CGR and the elected Chairman, who has the mandate of the people. If we do not solve this conflict, we will not have assisted our people. The fact is that, there is a real antagonism between the CGR and the Chairman of the district and I think it is our duty not to run away from realities of the day. Once we elevate this man or woman to a higher level, I believe we shall have solved the problem of the conflict. Leaving it as it is, is like putting two wives in a unipot, we shall have more problems in a district caused by the CGR, and in actual fact, we have seen this in some districts. There have been cases where the Chairman is preaching another gospel and the CGR the contrary. Are we not actually confusing the people? And yet all these people have got authority! So, Mr. Chairman, hon. Members, I appeal to you that let us try to solve this problem. The point which has ranked high in the debate is the issue of qualification. It is true some of these Government representatives do not measure to the task, as you have heard from the former National Political Commissar, but they are there. So, to accommodate some members, in view of what Hon. Besiigye has said and what Hon. Winnie Byanyima has emphasised, to reach a compromise, I would agree that we have this person appointed by The Public Service Commission. Reading the mood of the house, however, as Hon. Malinga pointed out, I propose that we accommodate the Hon. member supporting the district, by allowing that this person will be at the district but appointed by the Public Service Commission with the approval of the President. Other wise, Mr. Chairman, I would request Hon. Tinyefuza in the same spirit to withdraw his Motion and I move a deliberate Ammemdment to that effect.

MR. BIDANDI SSALI: Mr. Chairman, I do not know whether I should start with a statement saying that I am opposed to the Motion, but I think I start where Hon. Lt. Col. Sserwanga ended. First of all, in my view, some Hon. members have advanced reasons as if the office we are talking about is ceremonial. Now, if it is ceremonial, then one can talk of one person representing a number of districts and so on, but that is only a very small aspect of the role of this office, besides of course, the presence of the central Government, at that local level. That is very, important. The presence of Uganda. As somebody argued earlier, we are not creating independent states. So, the presence of this Central Government person is very important in the concept of our Uganda; especially so in light of the extent of the powers we have decentralised at the

district level. Mr. Chairman, this office has a service delivery aspect from the point of view of Central Government. There are so many responsibilities we have left to the centre, which we are saying - Local Government it is not your business- but which also have an aspect of service delivery to the people. Now, if for example, you talk in terms of immigration and you say, you do not need somebody to move from Bundibugyo or from Kotido, just to come somewhere for a Passport, a situation could arise where this Passport issue, these Immigration issues could be taken to the district level just to make it convenient to the people in that district - so that they do not travel distances and there are other areas also which concern the service to the people if you look at the list of responsibilities of Central Government on page 23. Mr. Chairman, because of this service delivery aspect in which this office should be involved, there will be need for a day-to-day interaction with society and do not make it impossible by saying let the CGR be in Arua, but somebody has got to travel from Nebbi to go to the CGR's office from Moyo, to go to the CGR's office and so on and so forth. I think it will not be fair for the population. Mr. Chairman, there is also the aspect of monitoring security. Professor Nsibambi seems to appreciate the need for a CGR at the material moment, as if it was a passing phase, but as long as the boundaries of Uganda still remain what they are, that aspect of security will continue to be needed, to be monitored, on a day-today basis, and so on, as long as you have the neighbours - Sudan, Zaire and so on and so forth. So, that aspect also is not a passing phase, it is something that is permanent. Mr. Chairman, this question of conflict which is being quoted by Prof. Nabudere and others,this has been the case, because there has not been a clear demarcation of responsibilities, even when we started implementing the decentralisation Statute; there was a lot of trouble on the part of the CGRs because much of the powers they used to have, was now taken to the Chairman, and they found themselves losing the powers that they used to enjoy. We have clearly separated the powers and there is no way a CGR will interfere with the powers of the Chairman without being unconstitutional. Mr. Chairman, the Mover quoted a situation of Northern Uganda Reconstruction Programme, Minister of Works, Luwero Triangle Minister and so on. Let me inform you Hon. Members through the Chairman, that, most of these he has quoted have been a failure. Those of you who are from the North, you know how successful, the Northern Reconstruction Programme has been. If that had been based on or at the district level of the district concerned, the story would have been quite different. But we talk of Northern Reconstruction for so many years on paper, but not on ground. When you talk of the Karamoja Development Agency, it is the same story; you go there, there is nothing on the ground, but when we say this is regional, it combines two districts, the same problem. Now, when you go to Luwero Triangle, I wish Hon. Kisamba Mugerwa was here, when he goes to one county in the district, he is accused of taking all Luwero Triangle funds to, Bamunanika, his own county and so on and so forth. So, although these are on the ground, regional, but the effectiveness of these regional organisations has really failed us. The Ministry of Works quotation, well that is alright, but if you look at, for example, Kapchorwa, how many kilometres is the Ministry of Works responsible for in Kapchorwa or even in Tororo? These are just a number of kilometres only. So, of necessity, administratively to be effective, they had to combine a number of districts. Mr. Chairman, there is the point mentioned earlier, although it was not taken seriously, but it is collaborated now by the quotation from Kapchorwa. I am seeing a situation for example, of a CGR in Kabalore, that is where naturally, I should be stationed. So, Kasese would be answerable there, Bundibugyo answerable there, and so on and I am seeing a lot of politicking where Bundibugyo will accuse the CGR for having taken priority or favoured Kabalore against Bundibugyo or Kabalore against Kasese in that particular respect or Mbale against Kapchorwa and we are creating situations for nothing! But, Mr. Chairman, just like some other members have indicated, I am very impressed by the contribution by hon. Besiigye I think it will be a very good idea if this Central Government Representative is a civil servant appointed by the Public Service Commission, I think that will solve the problem, even when we talk - *(Applause)* - of elections, today, it is the DES who the electoral commission has been using as the one in charge of elections, by virtue of the fact that he has been independent, and appointed by the Public Service Commission. Now, the DES or equivalent whom we have created is now responsible to the district;the district is going to appoint him. So, if we now make this person a civil servant appointed by the Public Service Commission at the centre, then he will be able to assist the electoral commission in an independent capacity. So, I would like to request

Hon. Tinyefuza to compromise to this Government Representative not, the DA, the political DA, but the Central Government Representative to be at the district, but also compromise to him and hon. Besiigye that he should be a civil servant in which case, the two can get together and we specify the roles, but please, hon. members get away from the idea that this person has nothing to do, he has a lot to do in the delivery of services to the people. Thank you, Mr. Chairman.

MAJ. GEN. TINYEFUZA: (NRA DELEGATE): Thank you Mr. Chairman. As clearly really put across by several members, I think our fears have been how to resolve the conflict between these two people the CGR and the elected representative of the people and when I brought in this regional representation vis-a-vis Central Government, in a way, it was actually to undermine, indirectly to undermine the capacity of this Government Representative from all the time poking his nose in district affairs. Actually that is the implied effect it would have, because if a man was to be stationed in Kabalore, he would really remotely interfere with Kasese and I am actually weakening Government there deliberately. However, I am seeing that many members actually are also right now, the mood is for the district. I appreciate this I think, this is a phenomena which has cropped and I think many people treasure it. However, once you satisfy me, about conflict resolution, that mechanism at the district between these two gentlemen, and then, deal with the qualification of this person, I think I am satisfied; because once the person is a civil servant, the qualifications are clearly articulated and once the man is at the district, I am also as a civil servant I am also satisfied, because politically two may not interfere. Therefore, I would actually withdraw my Motion in favour in hon. Kiiza Besigye could formulate, one, and as a civil servant and put it across Mr. Chairman.

THE CHAIRMAN: Okay, Hon. Tinyefuza has withdrawn his Motion. Now, let us clear a few things first. There is a proposed Amendment, but now let us see which goes furthest. There was a Motion by hon. Maliro, which seeks to retain the present formulation except setting out functions. Then, there was an Ammendment brought in by hon. Sserwanga Lwanga which is similar more less to one moved by hon. - proposed by hon. Adoko Nekyon which is more less the same as hon. Serwanga's except that it seeks to also to set out the functions of the Resident District Commissioner. Now, if we proceed with one of hon. Nekyon, he would be covering both the one of Sserwanga and the one of hon. Maliro to some degree. Hon-Nekyon is moving that there shall be for each district a Resident District Commissioner who shall be a Senior Civil Servant appointed by the Public Service Commissioner with the approval of Parliament. I think hon. Nekyon you see that the aspect of Parliament coming is quite difficult, because if it is a civil servant, he said, it was just an over sight, that with the a approval of Parliament, it should be out; so that it reads:

There shall be for each district a Resident District Commissioner who shall be a senior civil servant appointed by the Public Service Commission. Well, this is a Motion and then they go on to say, the functions of a Resident District Commissioner shall be to coordinate the administration of the Central Government services in the district and;

b) advise the District Chairman on matters of national nature that may affect the district or its plans and programmes and particularly on the relationship between the district and Central Government. So, this is the Motion moved by hon. Nekyon. As I said, it summarises the one aspect of hon. Maliro's Motion as well as changing the opening paragraph in a much more drastic manner than hon. Maliro. So, I take it to be a bit further than his and therefore, I will give hon. Nekyon the Floor to move his Amendment seeing that, hon. Tinyefuza has with drawn his. First let the Motion be moved then we seek clarification. Order, Hon. Nekyon you have the Floor, then ...

MR. NEKYON: (MARUZI COUNTY): Mr. Chairman, the purpose of my proposed Ammendment is very simple. I have listened to the views expressed on the Floor of the House concerning this office of CGR, and I came out with the opinion that will remove the fears which have been expressed; we should have the qualification of this person clearly spelt out and the best way to spell out the qualification is to say, that this person must be a senior civil servant. Why do I say that? In my experience, the District Commissioner was the senior civil servant and he did his work fairly well in coordinating the work of the Central Government in the district; he was the Chairman of the district team of the Planning team, which consist of

the Veterinary department, Agricultural department, water department, education, health and what have you. To have some body who can chair the meeting of such high ranking officials, this person must be a high ranking Government official, because you can be respected by the meeting only if the team that you are equally talented, but if you obviously inferior, to the people whom you are chairing, then you are bound to have a rowdy meeting, the Chairman, we respect you here, because we feel that you have got the qualification to chair the Constituent Assembly. That is why I think that what has been happening has caught a lot of fear. At one time in Apac, we had a Veterinary Assistant who had specialised in castrating bulls as CGR and below him was the District Veterinary Officer who might have been his District officer before. SO, you can see the situation can be very embarrassing, this man was your Junior yesterday, working in the field, now today, he comes here as the CGR and then the District Veterinary Officer sits below him. To remove this kind of fear, you need a senior government official and I insist on civil servant, because the work of coordinating the various departments is obviously work which can be best done by civil servants because they are running day to day work in their profession. Then when we come to the question of function, I decide to revert back to the original text and specify that the first work would be to coordinate the administration of the Central Government services in the district and this is actually what he should be doing and once he does that, he is not interfering with the work of the Local Government. They are separate functions, and not going with a special power. I have heard a member saying that we do not want to create a another - a centre of power; there is no centre of power here. The function he is going to carry out is to deal with powers which are already given to the Central Government, he is not going with special powers, nothing just coordinating those powers which we are giving to the Central Government. Now when we come to (b), I have amended it, say the CGR does not advise the Central Executive of the District, he advised the Chairman instead, because once he goes to the Executive Committee of the district to advise it, his advice may conflict with the views of the Chairman. So, I would prefer that to make the administration clear, he gives advice to the Chairman himself instead of giving bad advice to the Executive Committee a.nd may be splitting the Executive Committee. If somebody comes here, the World Bank comes here and wants to give advice to Uganda, he would rather go to the President and advise him instead of going to the Cabinet - to advise the Cabinet. It will look funny that you can go to my own committee and give advice when I am outside; I would prefer that you give the advice to me, then there is no conflict of interest. I beg to move, Mr. Chairman.

MR. BIDANDI SSALI: Point of clarification. Mr. Chairman, my point is on appointment, I seek clarification. Would Hon. Nekyon be opposed to the idea of the President appointing this senior civil servant to this post in the same way he has all along been appointing a Permanent Secretary?

MR. NEKYON: Why I prefer appointment by Public Commission is as follows. The Hon. member will remember in 1980, just before the elections, ten District Commissioners were removed and replaced by others, this created a lot of suspicion; for people thought that they were removed so as to have people who would manipulate the elections. But if those civil servants were appointed and posted, to represent the Central Government and coordinate the functions there, that kind of conflict would not be there. Secondly, I have noticed that in the district, you have a problem, even the Minister himself would have a problem, because when he had to go to the CGR who is appointed by the President, he sometimes thinks that he is above the Minister. I have seen on the ground people struggling in Apac during the World Food Day for who should sit first and the CGR thought that he was above the Ministers there, because he was representing the President, he thought that his presence there was the presence of the president. So, that kind of thing has to be removed.

I think the position is clear, if the President wants a particular District representative, he will reshuffle. All that he is to do, is to tell the Chairman of the Public Service Commission, that this man is not performing his work well, he is not reporting on security well, so he should be removed.

THE CHAIRMAN: Hon. Tibamanya first.

MR. TIBAMANYA (Kashari County): Thank you Mr. Chairman. This is addressed to Hon. Adoko Nekyon. I agree that it would be better if the Public Service Commission was to appoint but the fellow being appointed is going to carry out execu-

tive functions on behalf of the executive. So. somehow I am wondering whether Hon. Adoko Nekyon would not let the Public Service Commission appoint but with the approval of the President?

THE CHAIRMAN: He is still thinking about that. Hon. Bageya.

MR. BAGEYA (Kigulu North): Thank you Mr. Chairman. I want to respond to an issue that Hon. Kiiza Besigye raised.

THE CHAIRMAN: No. we are now debating the Motion by Hon.

MR. BAGEYA: That is quite right, it will help me clear my mind on this particular Motion. The idea of having a CGR and a chairman who takes precedence. Although Hon. Ruzindana sort of put it - he said if it is a national occasion, then the CGR takes the precedence. If it is a district occasion, then the chairman - I do not know whether that is authoritative or not and if it is not, I would like to clear my mind before I can ably debate on this issue, Mr. Chairman.

THE CHAIRMAN: I think the matter should be as on. Ruzindana put it, except if he is a civil servant appointed by the Public Service Commission, would he be representing the president as well? He is just a Central Government Representative but not representing the president. Okay, Hon. Maliro.

MR. MALIRO (Mwenge North) Thank you Mr. Chairman. I seek clarification from hon. Adoko Nekyon on what the relationship between this senior civil servant appointed by the Public Service Commission and our chief administrative officer of the district whom we think is a head of the civil service in the district would be. *(Applause).* How shall we ensure there is no conflict between this civil servant appointed by a higher authority and a civil servant appointed by the lower authority? Again how does he interact with a district chairman who is a political head of the district yet he is a civil servant? Is he supposed to work under the district chairman as an employee of the district or is he somebody above the employees of the district?

THE CHAIRMAN: No, I think let us handle it this way. We shall go for lunch and then when we come back, hon. Nekyon will answer those issues raised, after which we will see whether we need any further debate on the matter. I, therefore, adjourn for lunch and we resume at three O'Clock. Thank you.

(The Assembly adjourned and resumed at 3.00 p.m.)

THE CHAIRMAN: Hon. Delegates, let us resume our business. When we adjourned, we were discussing a Motion by Hon. Nekyon to the effect that there shall be for each district a Resident Commissioner who shall be a Senior Civil Servant by - at that time he was suggesting to be appointed by the Public Service Commission. The Mover has since, I think consulted and has come back with a new position. So, I will give him the Floor and then we proceed from there but I would like to ask him to indicate whether he would like to ref-ger to this person as a Resident District Commissioner or as Resident Commissioner as it appears in his Motion because you are calling him an RC. Hon. Nekyon.

MR. NEKYON (Maruzi County); Mr. Chairman, I think the correct nomenclature would be a Resident Commissioner because when you say there shall be for each district a Resident Commissioner *(Inaudible)*- I say there shall be for each District a District Resident Commissioner. I do not know what you think about that?

THE CHAIRMAN: Well, you say here - There shall be for each district a Resident Commissioner - Is that how you want it to be?

MR. NEKYON: Yes.

THE CHAIRMAN: Okay, I just thought maybe - because in the recommendation of the committee, they are referring to a Resident District Commissioner. That is why I was drawing your attention to that but I think it is really upto the Members. Let him make his observation , then we can take the Floor. Let us give the Floor to hon. Nekyon, then I will come to you.

MR. NEKYON. Mr. Chairman, during lunch time, I had consultation with several people. There was a group that wanted me to agree to leaving the appointment of the Resident Commissioner to the president as opposed to the Public Service Commission. I saw sense in their proposal. So, I have brought in the appointment by the president and the reason is - since we are saying that he shall be appointed on the ranks of senior civil servants, it is

clear that he has already been appointed by the Public Service Commission, before he becomes a Senior Civil Servant and he is therefore, a current civil servant, he is continuing with his function. Therefore, when a president appoints him in effect, the president is nearly picking him from among those who are already qualified to do this work and posting him to a particular district to carry out the function as Central Government Representative in that area. So, we have compromised on that and I think that would go a long way to satisfy other people who were doubting as to whether this person should not be appointed by the president. Other people were wondering whether this thing should be constitutionalised and others were saying that we should leave the functions to be determined by parliament. My opinion is that it is important to put this office in the constitution because if he is going to represent the central government in the district, where we have really divided the functions between the Central Government and the districts, it is better for us to give this person his own functions and he goes with clear cut definition of functions instead of saying parliament will prescribe his functions. Supposing we refer this to a parliament which will not see the spirit of the constitutional provision and then they come out with proposals of duties which are contrary to the spirit; we would have defeated the purpose since this is an important linkage between the central government and local government. I think we have to specify the functions. We have to specify the functions of the president. We specify the functions of the chairman of district council and also of the district council itself. So, I do not see why we should shy away from specifying the functions of this office. If you postpone this question - the issue of saying we give it to parliament, it is not right. Once we have done this, we have finished the work. Parliament has been given a lot of work in this constitutional arrangement. Every time we are saying - refer to parliament, refer to parliament. In the end you find that over the last one or two years we will just be making laws to fulfil the parliament instead of going to do some other work. So, Mr. Chairman, I think we have reached a lot of compromise and you see that in (c) - we have added (c) as a third function which says - to carry out such other functions as shall be prescribed by parliament or as prescribed by parliament. This leaves a room for additional functions to be added. But the main functions must be specified here and now. When we say to carry out such functions as shall be prescribed by parliament, you are allowing parliament to say that it can do immigration work for Immigration Officers, it can do electoral work and that kind of thing. So, that is why we are adding this which was proposed by hon. Besigye. We have agreed to put it in one amendment. I beg to move.

THE CHAIRMAN: This is the Mover amending his own Motion. So. really there is not much dispute about it. I think we spend about one and half hours discussing this thing. Can I hear from hon. Odur and then we pronounce ourselves on the formulation in (1) and then we go on to (2)

MR. ODUR (Dokolo County): Thank you Mr. Chairman. I support this amendment and I believe that through the debate on this subject, we have finally arrived at a piece of legislation which is not only sound but one which has embraced a number of major principles. First is the question of qualification; A senior Civil servant will of necessity be a person of some letters and will be of some experience on the affairs of our country. In some districts, Mr. Chairman, it is believed that the only qualification expected of a CGR is political patronage and some bravery. It is understandable if such CGRs could not earn meaningful respect. Others quite wrongly believed or viewed some CGRs as some kind of Intelligence officers. With men and women coming through the public service meal, things should change for the better. Mr. Chairman, the second issue is that of Resident District Commissioner being responsible for monitoring the implementation of all government programmes, projects and services. This responsibility is likely to be very substantial under the decentralisation system of government. For monitoring to be meaningful, the parties undertaking it, must understand what they are doing. I am afraid this work would be impossible in some districts if the qualifications of CGRs are not rectified as we are doing in this amendment. The other issue, Mr. Chairman, on this matter is the question of tendering advice either in writing or verbally to the district or Urban Resistance Councils or even to their chairman, for that matter. Again, under decentralisation system, the districts will have some high calibre professionals. Here again, we need people who will give advice from a position of knowledge. We do not need rumour mongers, Mr. Chairman. Lastly, Mr. Chairman, the relationship between the Resident District Commissioner and the President should assume some kind of personal level. It is, therefore,

necessary that the Resident District Commissioner should be appointed by the President. We must understand that even under decentralisation, the Central Government will still be concerned and responsible for the overall development of Uganda. Under these conditions, the president must therefore be able to have a proper briefing from all corners of Uganda, and should be able to give guidance to all persons and all organs of government. He should be able to do so through his or her personal representative at the district level, also to directly express his opinion about the performance of such persons. This ammendment, Mr. Chairman, embraces all these important issues and addresses them positively and it is for these reasons that I strongly support the ammendment. Thank you Mr. Chairman.

THE CHAIRMAN: Do we have to debate this now? We spent about one and half hours on this matter. I would like us to pronounce ourselves on (1), then we go on to (2). You do not like the formulation here? Hon. Obua Otoa.

MR. OBUA OTOA (Erute North): Thank you Mr. Chairman. Over the lunch hour I discussed with the Mover of the Motion, that it should read : *There shall be for each district a resident commissioner appointed by the president who shall be a high ranking civil servant of at least Principal Assistant Secretary Level.* Inspite of the murmuring, Mr. Chairman, I discussed this issue with the mover and he found no reason to object. I contend that the formulation as it is now is vague.

THE CHAIRMAN: Anyway, hon. Obua Otoa I think you discussed with the Mover and he agreed, but immediately you parted, he changed his mind to this formulation and so we cannot pursue that one. Hon. Sam Kuteesa.

MR. OBUA OTOA: That is another betrayal. *(Laughter)*

MR. KUTEESA S. (Mawoogola County): Thank you Mr. Chairman. I would like to get clarification from the Mover of this Motion as to why this job must be exclusively reserved for Civil Servants. Personally, I think this is a job which should be done by a man who is knowledgeable, a man who is competent, a man who has got integrity like hon. Nekyon when he retires. I do not see why we must limit it to a civil servant. *(Applause)* He says - when I consulted him - he say he wants someone who is controlled by Standing Orders. Surely, you do not need Standing Orders to perform the job of a Resident Commissioner. Personally, I think that we should subject it to a man of integrity, experience, knowledge of public affairs and a few words like that. But why restrict it to a civil servant. I would like to have that clarified. Otherwise, I will move to remove it.

THE CHAIRMAN: You are just opening up a discussion again. This matter - the arguments why they were talking about civil servants were given even before we went for lunch and they were answered, they were advanced by anumber of people. So, let me put the question on Number (1).

(Question put and agreed to)

THE CHAIRMAN: Order! We go to the second Clause which sets out the functions. I will put the question on Number(2). Let us hear from the chairman first.

MR. MASALU MUSENE: Mr. Chairman, first of all, it was the feeling of the committee that these functions change from time to time; so, that they could better be left to parliament but even then I can see (c) stipulating that carry out such functions as prescribed by parliament but if you look at 2(a) to coordinate the administration of the Central Government services in the district. It is the same function that we have given he chairman of the district. If Members can turn to Page 15 of our report - 3(d), Page 15 of the Report of the Committee which stipulates the functions of the chairman. 3 (d) also says that the chairman shall coordinate the activities; coordinate and monitor the government functions as between the district and the central government. So, that already is a source of conflict if you are giving the same functions to two people in the district.

THE CHAIRMAN: No, for me I read them differently. This one is - those jobs which have been reserved for government, he coordinates them but the one you read, infact, fits into (b) that he will liaise with government representative to discuss the inter governmental arrangements in terms of work and also relationships. I do not personally see the conflict. Hon. Ndege.

MR. NDEGE (Luuka County): Thank you Mr. Chairman. 2(b) - I have talked to hon. Nekyon. I do not know whether he accepts. Instead of *advise*, I was pleading with him that we should use the word *co-ordinate* with because it is not one way traffic. It is a two way traffic. He will be talking to the chairman and the also will be talking to him. So, instead of advice, if he does not object, we should use coordinate again. Thank you.

THE CHAIRMAN: Hon. Nekyon.

MR. NEKYON: I am not quite clear on that ground, Mr. Chairman. Maybe you will assist us but as I see it the work of coordination has already been given to someone else which the chairman of the committee was trying to confuse with the functions we have given to the Resident Representative. So, I think coordination has already been assigned to the chairman but this one I am lifting directly from the Draft Constitution and there it just gives advise on what is going on nationally and what things are happening in the district as far as the functions of the central government are concerned. Of course, as they are together with the chairman in the same place, there is bound to be a lot of interaction between them which we do not need to spell out her and when he gives to advise, of course, the chairman will be expressing to him his own views on those very matters. So, I really do not see how you can bring coordination there.

THE CHAIRMAN: Okay, let us pronounce ourselves on this one. I would like to put the question. I think we have discussed long enough. This one is straight from the text as it was. What do you have about (c)?

AN HON. DELEGATE: Mr. Chairman, I am wondering why parliament has to prescribe these other functions other than be assigned by other functions by the resident himself since he is the one a ointin . He should be the one to assign him duties rather than parliament. So, I wanted to move *(Interruption)* a Motion to change that.

THE CHAIRMAN: What does hon. Nekyon say to that? So that We do not have to go through Motions.

MR. NEKYON: What I had in mind here, Mr. Chairman, is that you are sometimes seeing parliament introducing new legislation and in such legislation you find functions being carried out at district level. I was, therefore, thinking that if parliament decides - let us take an example of general elections; it is parliament which will determine who will become the returning officers in the electoral law. So, it is parliament which actually assign such duty that who will become the returning officer. It is not the president who does that. That is what I had in mind and you can think of so many other instances.

THE CHAIRMAN: But hon. Nekyon, on top of that is it possible that the president can for instance, since we said that the president can take over the management of a district; he can for instance, decide to appoint him to manage it on his behalf. So, could we say carry out such other functions as assigned by the president or prescribed by parliament so that it covers both legs.

MR. NEKYON: I think parliament covers both because even when the president is going to take over, it will have to be the approval of parliament.

THE CHAIRMAN: But you see we have said here that the president may use any officers or persons of his choice in running the district when he has taken over. He does not have to use the Resident DC but he could use him.

MR. NEKYON: Either way, I have no objection.

THE CHAIRMAN: I was suggesting that we could cover both legs by saying - carry out such other functions as assigned by the president or prescribed by parliament.

MR. NEKYON: Okay, accepted.

THE CHAIRMAN: Agreed?

MR. NEKYON : Agreed.

THE CHAIRMAN: Okay, let me put the question.

(Question put and agreed to)

THE CHAIRMAN: Clause 2 is amended to include the provision relating to assignment by the president. Now let me put the question on 223 as amended - that Article 223 as amended to stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: It was very well heard. We go to Item 25 - 221 or 224. Hon. Masalu Musene.

MR. MASALU MUSENE: Thank you Mr. Chairman. Mr. Chairman, recommends that former Article 221 be deleted and a new Article be inserted to read as follows: *'Local government shall have such number of standing committees as its council by resolution determine.* The rationale behind this *(Interruption)*

THE CHAIRMAN: I put the question

(Question put and agreed to)

MR. MASALU MUSENE: Mr. Chairman, the committee recommends that former Article 222 be deleted and the same applies to Article 223. The rationale was that the recommendation to amend former Article 221 caters for the provisions under Article 223 and that it was necessary therefore, to provide those details in the Constitution.

THE CHAIRMAN: Agreed that those two be deleted.

(Question put and agreed to)

THE CHAIRMAN: Now, we go to the next - 224 or otherwise 225.

MR. MASALU MUSENE: Mr. Chairman, the committee recommends that Clause I of Article 224 - former Article 224 as it is in the Draft Constitution do stand part of the Draft Constitution to read ; 225 - Clause I - *There shall be a District Service Commission for each district.*

THE CHAIRMAN: I put the question.

(Question put and agreed to)

THE CHAIRMAN: Clause I stands part of the Draft Constitution.

MR. MASALU MUSENE: The Committee recommends that Clause 2 of former Article 224 be amended to read as follows: '*The District Service Commission shall a) Consist of a chairman and such other members as District Council shall determine, at least, one of whom shall represent urban authorities and all of whom shall be appointed by the District Council on the recommendation of the Executive Committee with the approval of the Public Service Commission.* Mr. Chairman, the recommended amendment does not differ in substance from the text in the Draft Constitution. Instead of stipulating the number of commissioners, the amendment recommends that the number be left to the District Council to determine. The amendment further seeks to ensure a representation of the urban authorities. The Committee recommends that the commissioners be appointed by the District Council on the recommendation of the District Committee and the idea of bringing in Public Service is to harmonise for all allover the country so that there are equal standards of these commissioners all over the country so that they are not below standard in one district as opposed to another. So, that is why the Public Service Commission comes in so that there are equal standards for all districts all over the country. Mr. Chairman. I beg to move. Hon. Mulenga, then I will go around.

MR. MULENGA (DP Delegate): Thank you Mr. chairman. I have one query or question. The service Commissions and Committees are not supposed to be representative - why is it then, why is this amendment thought necessary that one of the members shall be a representative or shall represent urban authorities?

THE CHAIRMAN: Well, in fact, this is a departure from the situation before centralisation. I think the situation before centralisation was that urban authorities of a substantial nature - I think for municipalities and above or even town councils I think. They appointed their own staff through their staff committees.

MR. MULENGA: Mr. Chairman, what troubles me is the urban authorities going to sit together and appoint their representative to go on the Service Commission because the appointment is by the council of the whole district on recommendation of the Executive Committee. The Executive Committee will select suitable people, take to the council which approves and then there is approval by Public Service Commission. But this idea of representing urban authorities, is in my view awkward for a service committee.

THE CHAIRMAN: Hon. Aggrey Awori are you going to talk about that one or yours is separate?

Maybe if we could get someone to answer that and then you come on the floor. Hon. Karuhanga.

MR. KARUHANGA (Nyabushozi County): Thank you Mr. Chairman. I just wanted to enlighten hon. Mulenga and whole House why the Committee came up with this formulation. Mr. Chairman, the committee knows that the urban authorities are also represented in the council. What we did not what to see is that when they are voting the urban authorities' representatives would be in very serious minority in the council. Now, in order to stop because the affairs in the urban authorities are so important for the district. It will be very important - in our wisdom, the committee felt that we should allow them to appoint as many as they wish but there shall be one of the Members from the urban authority; at least there should be a member from the urban authority. This was the rationale. It is not that the urban authorities will elect a member themselves, no. The appointment is to be done by the council but when they are taking into what they have to do is to make sure that out of - if they decide to pick four, at least one them should be from the urban authorities. This was because we think it is very important the urban authorities which are very important in the district and which are also shared by - because the urban authority is shared by the whole district. For example, in my case - in Mbarara, Mbarara town is really our town. So, it is very important that we also feel that the members from that city are also well represented and they cannot win a vote unless they are guaranteed. That was the purpose of our committee.

THE CHAIRMAN: I had given the Floor to hon. Aggrey Awori.

MR. AWORI (Samia Bugwe North): Mr. Chairman, I was just expressing concern about the conspicuous absence or silence on the issue of affirmative action regarding gender parity. Mr. Chairman, *-(Interruption)*

THE CHAIRMAN: You mean on this Public Service Commission?

MR. AWORI: Yes. Exactly.

THE CHAIRMAN: But I thought we have said that one third of the members should be women in the District Council.

MR. AWORI: In that case, Mr. Chairman, to avoid or to be clear on the issue we should have said consistent with this constitution.

THE CHAIRMAN: Hon. Bageya.

MR. BAGEYA: Thank you very much Mr. Chairman. Mr. Chairman, I was seeking further clarification from the chairman of the committee. If we say that there should be a representative from the urban authority and they take that list for approval by the Public Service Commission, what would happen if this particular individual is not approved? Would they insist they put another one?

THE CHAIRMAN: That is what would happen. They will have to go back and bring another name. Hon. Kasajja Patrick.

MR. KASAJJA P (Bulamogi County): Thank you Mr. Chairman. Mine is a follow up on the election of a representative from the urban council. As hon. Bageya has said, there is a possibility that of all the members elected to the council, one or even all of them do not qualify. such a situation is bound to paralyse the process, when the list is forwarded to the Public Service Commission for approval. I seek clarification as to whether under such circumstances the Urban authority would be required to elect a person who does not qualify. Since we already have members from the urban authority who do not qualify and yet we have already constitutionalised the precondition that one of members has to be from the urban authority, then we are going to have a problem.

THE CHAIRMAN: No, but I think you are not reading it properly. They are saying - at least, one of whom shall represent urban authorities. It does not have to be from those urban authorities but maybe it could be someone from the Urban Authorities Association or something like that. It does not have to be strictly from the councils of those fellows in the urban authorities. It could be from anywhere provided he is identified as representing the urban authorities. Paragraph (a) - I think we take it as it is. (b) - Hon. Masalu Musene?

MR. MASALU MUSENE: Mr. Chairman, the committee recommends that Paragraph (b) as it is in the Draft Constitution, do stand part of the constitution to read - *hold office for a period of 4 years but shall be eligible for re-appointment for another term of 4 years.*

THE CHAIRMAN: Hon. Nabudere.

PROF. NABUDERE (Budadiri West): Mr. Chairman, the formulation is not clear. Is it the Commission or Commissioners? Because if he says the District Service Commission shall hold office, that is not a correct legal formulation.

THE CHAIRMAN: Who shall hold office? There should be those words before hold office. Thank you.

THE CHAIRMAN: In (b) we should have the words who shall before hold so that we are making reference to the people who are members, who are appointed. Agreed on (b)?

(Question put and agreed to)

THE CHAIRMAN: Now, (3). Hon. Masalu Musene.

MR. MASALU MUSENE: Thank you Mr. Chairman. The committee recommends that Clause 3 as it is in the Draft Constitution do stand part of the constitution to read *'Members of a District Service Commission shall be appointed from among persons of high moral character and proven integrity'*

THE CHAIRMAN: Agreed?

(Question put and agreed to)

MR. MASALU MUSENE: The Committee recommends that a new Clause 4 be introduced to stand part of the constitution and to read *in the performance of its functions, a District Service Commission and Local Government staff shall conform to service, terms and conditions and standards established by the Public Service Commission for the public service generally.*

THE CHAIRMAN: Agreed?

(Question put and agreed to)

THE CHAIRMAN: Clause 4 now.

MR. MASALU MUSENE: The Committee recommends that former Clause 4 as it is the Draft Constitution stand part of the constitution to be Clause 5 and to read: *'5) A member of the District Service Commission may be removed from office by the Executive Committee of the district with the approval of the District Council and after consultation with the Public Service Commission but he or she may be removed only for (a) inability to perform the functions of that office arising from physical, or mental incapacity or from any other cause (b) misbehaviour or misconduct or (c) conduct unbecoming of the holder of the office.*

THE CHAIRMAN: Agreed.

THE CHAIRMAN: Now, let me put the question on Article 225. The question is that Article 225 do stand part of the Draft Constitution, those in favour say aye, to the contrary, no.

(Question put and agreed to)

THE CHAIRMAN: Next one is item 29.

MR. MASALU MUSENE: Mr. Chairman, the committee recommends that a new Article 226 be introduced to stand part of the Constitution and to read as follows: *'Subject to the provisions of this constitution, the government may on request by a District Council post persons to fill, assist and compliment the service of a local government.*

THE CHAIRMAN: Dr. Byaruhanga .

DR. BYARUHANGA (Kitagwenda County): Thank you Mr. Chairman. I want to point out to the Assembly and to my chairman that Item 30 should actually come before this Item 29. I think whoever worked out this arrangement made a mistake because this Item 30 is talking about the powers of the District Service Commission and it rhymes more with what we had considered in Item 28.

THE CHAIRMAN: Well, okay we take note of your point. It can be re-arranged at the drafting desk since it is a question of shifting sections. That can be done by the technical team. Hon. Ogola you had something to say.

MR. OGOLA (West Budama South): Yes, Mr. Chairman, I wanted clarification as to why posting should be a constitutional matter.

MR. MASALU MUSENE: Mr. Chairman, this recommendation is to enable local governments to easily get essential expertise through the services of the Public Service Commission because we can

have a situation in a district where they want a particular post; a qualified person of certain experience for a particular post but they may want the technical services of the Public Service Commission where there are more people because the public service being at the centre has a lot of man power and has a lot of access to all qualified persons of all calibre. So, if such a situation arises, we wanted to make it easy for the District Council to request for such assistance from the centre.

THE CHAIRMAN: Hon. Ogola.

MR. OGOLA: I am not convinced with the clarification Mr.Chairman. A District Council or District Administration can advertise for a post at any time and they would receive the applications, evaluate and assess the applicants and thereafter recruit them. Must the central government first assent to the appointments? I ask this because the implication here,is that somehow in all cases the central government will have to first assent to the appointments, which I think will greatly limit the districts

THE CHAIRMAN: No. I do not think you have clearly perceived the ammendment hon. Ogola. What it implies is that a district may request the central government to second some of their staff to work for the district in circumstances where they (districts) may fail to raise the people they want, or for purposes of other arrangements they want to enter into. This, however, is just an enabling provision. It is not for government to dictate hiring terms, but should the districts so request - central government can then fill in the gap.

MR. OGOLA : Thank you Sir.

THE CHAIRMAN: Hon. Kabugo.

MR. KABUGO (Nakaseke County): Mr. Chairman, I just wanted to improve on or to add one thing that was omitted on second line of the chairman s formulation; to add the word *central government* rather than to say a government may on request.

THE CHAIRMAN: No, although I used the word *central* government but the definition of government means the Government Of Uganda - I think in the interpretation provisions. So, it is picked up, there is no problem. I put the question that Article 226 do stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Item 30 - Hon. Masalu Musene.

MR. MASALU MUSENE: Mr. Chairman, the committee recommends that former Article 225 as it is in the Draft Constitution do stand part of the Constitution but reformulated 227 to read *'Subject to the provisions of this constitution, the power to appoint persons to hold or act in any office in the service of a district including the power to confirm appointment to exercise disciplinary control over persons holding or acting in any such office and to remove those persons from office is vested in the District Service Commission'*

THE CHAIRMAN: Yes, hon. Byaruhanga.

DR. BYARUHANGA: Thank you Mr. Chairman. Yesterday, our committee agreed to introduce a new Article and that article was to create a District Teaching Service Commission independent of this District Service Commission. So, when we say, as we have it here in 227 that subject to the provisions of this constitution, the power to appoint persons to hold or act in any office in the service of a district including the power to confirm..... is vested in the District Service Commission, we are really preventing the formation of the District Service Commission since we shall have said that all officers - the power to appoint all officers in the district is in the hands of the District Service Commission.

THE CHAIRMAN: Hon. Masalu Musene what do you say to that?

MR. MASALU MUSENE: Mr. Chairman, I am aware of what hon. Byaruhanga is raising but I thought subject to the provisions of this constitution would cater for that! and secondly, the District Service Commission may have committees because we discussed and agreed that in every district it is teachers who constitute majority of the workers and if you separate-in fact, in some districts they are about 80 per cent. So, if you separate teachers from these other workers, you will find that the Service Commission may be redundant. So, that is why we felt that this could be committees under the District Service Commission because for example, we may also have Health Service Committee. So, that is why I did not want to introduce it as an independent article.

THE CHAIRMAN: Hon. Kasajja Patrick.

MR. KASAJJA P. (Bulamogi County): Thank you Mr. Chairman. If you closely follow what the chairman of the committee has provided, you will find that the contrary is more convincing. If we have the majority of the civil servants in the district as teachers, then, there is need for us to have the Teaching Service Commission constitutionalised so that they are catered for. Otherwise, Mr. Chairman, if we leave this provision as it is here, we shall be leaving the majority of the civil servants in a district attended to by a body which is not qualified to handle their affairs. I think it would be important if we came up with a formulation for the Teaching Service Commission to be taken care of. Mr. Chairman, I support Dr. Byaruhanga's concern.

THE CHAIRMAN: Hon. Maliro.

MR. MALIRO (Mwenge North): Thank you Mr. Chairman. I foresee a problem now that we have constitutionalised the Teaching Service Commission and the Health Service Commission. Officers in these departments may imagine that their appointment will be directly effected by the central Teaching Service Commission or Health Service Commission, yet we would like them also to be appointed in the district. I discussed with my chairman and we have agreed that, perhaps, we could prepare a clause under the one we have just passed to introduce the existence of committees which would be the Teaching Service Committee and Health Service Committee. These would make recommendations subject to the approval of the main District Service Committee. I think that such an ammendment would create some harmony. Otherwise, we are going to have the Teaching Service Commission and Health Service Commission parallel to the District Service Commission, and in the long run the District Service Commission will remain with only a few people to deal with. We have, however, not formulated that amendment which would cover two commissions or committees.

THE CHAIRMAN: Hon. Rwabiita.

MR. RWABIITA (Ibanda South): Thank you Mr. Chairman. I think the role of the District Service Commission is to look into the needs of the districts as regards staff that are needed in various departments. Now, when you have to create other bodies to carry out the same job, I think this is duplication of work. Since the District Service Commission is created by the District Council, I think, it should be able to handle all the problems regarding staff or services in that district. Creating other commissions will instead breed conflicts of setting standards. You will find that the Health Committee will have their own standards. Then the Education Committee will also have its own standards resulting into several complications in the district; whereas, if you have got only one body carrying out the function of selecting the employees of the district, you will have similar standards to follow, hence lesser complications and complaints among the staff or even the people to be interviewed. So, Mr. Chairman, I oppose the idea of having extra commissions to deal with these Public servants in the districts.

THE CHAIRMAN: Hon. Rhoda Kalema.

MRS. KALEMA (Kiboga East County): Thank you Mr. Chairman. Mr. Chairman, I also tend to agree with the previous Speaker about this matter. I think hon. Maliro is creating a situation which is undermining the responsibilities which we said in Schedule 4, will be for Central Government because it seems to me that No.21 in Schedule 4 and 27 where we said, this will be the responsibility reserve for Central Government. I thought that we were by-taking the education policy, standards and the rest and then hospitals and public health policy. imagine they have to take care of the appointments in each case at Central level. So, I do not know what hon. Maliro is trying to create here. Creating another independent bodies in each district is going to create a lot of confusion. Mr. Chairman, I do not know whether Mr. Maliro can explain better what really means in this case.

MR. MALINGA: Mr. Chairman, what I said is this. Having established a health service commission at the nation and having established a teaching service commission and then providing nothing of that nature at the district would mean that these officers in the absence of such commissions would have to be appointed by these commissions at national level. This would create double standards of having some district officials appointed locally by the Public Service Commission and the teachers being appointed nationally because they do not fall under the Public Service Commission. So we are saying this District Service Commission should have sub-committees to cater for the teaching

service activities and also another sub-committee to cater for the health service activities. But then the two will be responsible to the major district service commission. The Chairman has just formulated an Amendment to that effect.

THE CHAIRMAN: Whatever you say, if one reads that the power to appoint, pass or act in any office in the service of the district of course those people will be misunderstanding in their own minds but the Constitution will be supreme as far as the application is concerned. But I think my attention has been drawn to Clause 3 of Article 195 which was stood over. I think the general view was that we should only have one at district then it can service all the branches.

MR. MALINGA: Mr. Chairman, I think when we are talking about this teaching service and the Public Service at the district level, we should be conscious of the numbers concerned. Whereas with teaching profession, the numbers involved are quite large and are increasing as the number of schools increases. We do not expect a corresponding increase in a number of district service personnel involved whether in the medical Law or Judicial service. So, it is not necessary to have a health committee at the level of the district. What I can foresee is that the health commission at the national level will employ all the staff who will then be appointed by the district service committee. But in case of the teachers, the situation is like this. The entire training of the teacher is supervised by the teaching service commission through the district teaching service committee. Before the person is admitted in the Teacher Training Colleges, he undergoes an interview by the District Service Committee; and then when he is there, his conduct is monitored. The college authorities only look at the academic aspect of it. But when it comes to the crucial matters of discipline, they have to report it to the Teaching Service Committee which will handle it. When he passes out, he again has to do an interview by the Teaching Service Committee. So, in my opinion since it is a responsibility of the Central Government to maintain standards of education and a uniform education policy, we should the training appointment of teachers as being a responsibility of the Central Government. This will enable the Central Government to tap personnel. Suppose there is an access of teachers in Soroti district, and there is a dash of teachers in Kapchorwa, if you leave it to the District Service Committee alone, it may not be possible to move the required numbers of teachers from Soroti to Kapchorwa. So, the way I am seeing it and I put this to the relevant committee with hon. Karusoke. we said that we should maintain the teaching service committees which we have only been recently reinstated in the country. We have now on the ground district teaching service committees which are doing a tremendous amount of work and they are working almost on a full time basis for Members who may not know. The District Teaching Service Committees are almost constantly meeting and they are professionals. You cannot get the bunch of who are in the District Service Committees who are people of all sorts of backgrounds to handle teaching matters because these are professionals to whom we are entrusting the upbringing of our children. We must have people whose background is carefully vetted by fellow professionals. Whereas the appointment to District Service Committees tends to be political. hope the News Papers are wrong when I learnt that in Mbarara District, for example, when they were trying to compose their District Service Committee there were meetings in one social centre; one in another to make sure that our religion got the right numbers in the District Service Committees. If we entrust such kind of people t to be responsible for training of our teachers, I think we will have done a disservice to this country. So, I would like to see this remain as a Central Government function and it should be done by District Teaching Service Committee as a Committee of the Teaching Service Commission which is here at the Centre. So, I do not want this thing mixed up with the District. The District Teaching Service Committee should remain as a Committee of the District Service Commission and should be answerable to the Teaching Service Commission. Let us not mix this with the District because the matter of Education is very important. Thank you.

MRS. LAGADA: Mr. Chairman, I would like to support Hon. Malinga's submission. A few years ago, before *-(interruption)-*

MR. KIWAGAMA: Mr. Chairman, I am raising a point of procedure. What is the Motion on the Floor that we are debating? Nobody has moved an Amendment, a formal Motion and we go on debating.

THE CHAIRMAN: We are on 227 - Public Service Commission. Some people have sought

clarification and others have made comments. Now from what I can see, 195 (3), does envisage that the teaching job should remain with the Teaching Service Commission. But they are at 195 (3) if we pass it they can delegate to the District Service Commission the function of appointment and control.

MRS. LAGADA: Mr. Chairman, a few years ago, before the district service committees were instituted in this country, we had a terrible scenario with teachers. We had so many teachers on the ground who had never been confirmed. First of all, as Hon Malinga says, these teachers are supposed to be interviewed before they join colleges, but they were going into colleges before being interviewed. With computerisation of the pay system, many of these teachers were in trouble because they did not have letters of confirmation which were part of the pre requisites for a computer r number. In fact up to now part of the problems we are having with teachers and their salaries arises from lack of pertinent documents which they are supposed to have. So, the District Teaching Service Committees are a necessity. I think they should really be different from the District Service Committees so that they concentrate on teachers and they streamline the teaching service. Thank you.

MR. MASALU MUSENE: Mr. Chairman, after listening to so many Speakers and in view of Clause 3 of Article 195 which you have referred us to, it is true that Clause was stood over and I remember very well, it was resolved that the teaching service commission should be clear. It should delegate to one and not to District Teaching Service Commission or any other authority. Now, after some consultation, we have come up with a new formulation which will be Clause 2 of Article 227 and this formulation is to allow a district service commission to create sub-committees and it reads as follows: *'There will be sub-committees of the District Service Commission for specialised disciplines and the sub-committee may cop to such members as they -(inaudible)fit.* 'So, I feel this will now cater for the situation of the teaching service at the district level and there are also other fields like health so that these sub-committees will be performing specialised functions but under the district service commission.

THE CHAIRMAN: Why don't you put it in this way, 'The District Service Commission shall appoint committees to look after specialised areas'. Or how do you want to put it?

MR. MASALU: Mr. Chairman, that formulation is okay in that what we are trying really is to make sure that there are sub-committees which can handle those specialised disciplines especially teaching and health, and any other which they may deem fit. But at least for uniformity they will all be under one District Service Commission. That will cater for Clause 3 of 195 because the Teaching Service Commission when it delegates its functions to the District Service Committee, the District Service Committee will refer it to that sub-committee.

MR. MALINGA: Mr. Chairman, the point is this, we want the uniform standard in the country and for this the Centre should pay. Therefore, the services of the Teaching Service Committee should be paid for by the Central Government so that we can have uniformity. So, instead what I would have on the District Service level we could say that the district can delegate to the District Teaching Service Committee as its functions in relation to teachers if there is any. Otherwise I would want to see the Teaching Service Commission being the one putting down the Teaching Service Committees. The composition of the Teaching Service Committees should not be done by the district but by the District Teaching Service commission. That is what I want. I want to see that it is paid for. So, what I would rather have is that we have made 195 to say, that the Teaching Service Commission may delegate its functions to a District Teaching Service Committee. Then with regard to the local district matter we can say that the District Service Commission may delegate the appointment of teachers to a District Teaching Service Committee.

MR. BIDANDI SSALI: Mr. Chairman, I do personally feel that the amendment by the Chairman which you polished up actually takes care of this because there is another aspect of danger in what Hon. Malinga is saying. It is very, very important that the district has full control over the teachers in the district except the technical aspect. But every other aspect whether teachers are not teaching or becoming drunk that must be the responsibility of the leadership of the district. Therefore, the association we want (a) are the standards that are common. (b) The technical syllabus of training teachers. But the day to day management of teachers and pushing them to do what they expected to do, shall remain the responsibility of the District Council. It is the only way we can improve our education at the district level. Therefore, if you now say that the Central Government should continue to be in charge of the teachers, even

discipline, you are missing a point in what we want to achieve under decentralisation. So, Mr. Chairman, I do feel that amendment by the Chairman which he polished up takes very good care of the fears of hon. Malinga.

MRS. BAGARUKAYO: Mr. Chairman, we know the district must have control over its members, and hon. Bidandi Ssali is in agreement But what we are saying here, because I am supporting hon. Malinga, is that we should have the District Council appointing these Members on the District Teaching Service Committee. But since we have a national body that is guiding the over all development, educational policies in the country, we should have the approval of these people on the Teaching Service Committee at the district level done by the main body. In this case, we are not going to disassociate the members on this Teaching Service Committee from the District Authority. For purposes of standards, we cannot authorise the District Teaching Service Committee to choose a very important body and yet one person has observed that in one district, there were camps to choose who is going to be on the Service Committee. We may even end up having District Service Committees chosen on that ground because each member will need to have his or her person on this committee. I request our Chairman, since I belong to Committee 4, to change his formulation so that it conforms with hon. Malinga's amendment. Thank you.

MR. ETUKU ENYOK: Mr. Chairman, I would like to correct and remind the House, that we passed Article 194 to change Teaching Service to Education Service. That aside, when we were dealing with the forth Schedule of Article 214 two days ago, I recall that on Schedule 21, we said functions of services exclusively reserved to the Central Government included education policy. My complaint here is that by mixing, say the education service commission and health service commission with the district service, we shall be unfair to these specialised areas. I concur with what hon. Malinga is saying, that we should keep the education service commission or committee in the district as a separate entity. What is important is the education service commission has to be decentralised to the district but it should remain a separate entity. I have observed that where education is left under the District Service Commission or a particular Committee in the District, education priorities plus teachers demands are often ignored. Talking about the number of employees a district service controls vis a viz those controlled by the education service, one realises that we have so many teachers in the district that require special attention, given their vast problems. The same problem affects the health service. I propose that we cater for the education service committee in the districts. This, however, does not mean they are going to be independent. They are all under the District Council. To make a sub-committee of the Commission, will be doing the Education Service a dis service. I beg the House to critically consider this amendment and grant the Education Service Committee and Health Service Committee in the district their required independence without clogging them under the District Service Commission. I thank you.

MR. KASOLE BWERERE: Mr. Chairman, I think that the education service body should be a committee of the District Service Commission but working according to the established national education policy. Mr. Chairman, we have already approved that the District Service Commission will be approved by the Public Service Commission. We will, therefore, be following the same national policy.

Secondly, having the education service commission appointed centrally is defeating the principle of decentralisation.

Under such an arrangement, teachers are going to have divided loyalties. They will be tempted to disobey their masters at district level, knowing that they are answerable to a different body.

Mr. Chairman, decisions concerning the teaching service at a district level, will also take long to come forth, since the committees established by the Central Education Service Commission will not take decisions until their masters give them a go ahead. I, therefore support the amendment moved by the Chairman since it effectively caters for all specialised areas. The various committees should arise from the District Service Commission. Thank you.

THE CHAIRMAN: We can then say that we have a new Clause 2 which reads, 'The District Service Commission shall appoint Committees, or establish Committees in respect of specialised areas.'

MR. MASALU MUSENE: Thank you, Mr. Chairman. Mr. Chairman, some Members were of the view that if we mention some, time may come when it may be necessary to form others besides those mentioned. Because the most outstanding now, is education and health. But time may come when we need more. So, maybe if we just leave it for specialised disciplines and then it will be up to the district.

THE CHAIRMAN: I want to put the question on the proposed 2. The formulation is that the District Service Commission shall establish Committees in respect of specialised disciplines'.

(Question put and agree to)

THE CHAIRMAN: I now put the Question on 227 that it stands part of the Draft Constitution.

(Question put and agreed to)

MR. MASALU MUSENE: Mr. Chairman, the Committee recommends that former Article 226 be deleted. This Article deals with election procedure of Members of the District Council and the issue of voting. Now the rationale behind deleting this 226 was because election procedure has been dealt with in previous recommendation, for example, the Chairman is already dealt with; he is elected on universal adult-suffrage. Councilors are also elected in a similar way and one per sub-county and universal adult-suffrage of course envisages secret ballot. So, these details relating to secret ballot and open ballot, we feel have already been dealt with and that is why it is recommended that 226 be deleted. Thank you.

THE CHAIRMAN: Agreed!

MR. MUSALU MUSENE: Mr. Chairman, the Committee recommends that former Article 227 be amended to read as follows, and reformulated as 228:

'Parliament shall prescribe the terms and conditions of service for (a) members of the local government councils; and (b) Members of the District Service Commission'.

PROF.SENTEZA KAJUBI: Mr. Chairman, I would like to seek clarification from the Chairman of the Committee in the 227 in the Draft itself. They talked of not only members of the Council as such. But they also talked of members of the Committee that they be paid such allowances and the District Council may approve. They also talked of members of the District Service Commission. I am wondering why these have not been mentioned in the Article.

MR. MASALU MUSENE: Mr. Chairman, I thought that has been summarized in (a) when we say *'Parliament shall prescribe the terms and conditions of service for members of local government councils'*. So, all have been summarised as local government councils. It covers all including districts and urban authorities.

THE CHAIRMAN: What about in view of the Service Committees? Do you say, Members of this Service Commissions and their Committee.

MR. MUSALU MUSENE: Mr. Chairman, maybe now we can add (b) that Members of District Service Commissions and their Committees.

PROF. NABUDERE: Mr. Chairman, I consider this recommendation a step backward from the recommendation of the Commission itself. What we have done in this Chapter is infact to increase the powers of districts. I see this as again putting the powers in the hands of Parliament on matters which even the Odoki Commission had clearly laid out that the District Councils themselves would approve the various allowances paid to various Members of various committees and here we are, now passing this power back to Parliament. I would like the Chairman of the Committee to clarify on this matter.

MR. MASALU MUSENE: Mr. Chairman, the Committee also considered that issue and we resolved the way we did for purposes of standardisation all over the country because we did not want the situation where members in Mpigi are paid different from Kalangala or Mbale. So we felt that, especially Members for example, of the District Service Commissions since we have said that there should be uniform standards. So, it will bad for the Member of Mbale to learn that his friend in Masaka is getting more. It may demoralize him and he may not do his work effectively.

MR. BIDANDI SSALI: Mr. Chairman, I am just adding more confusion rather than the Chairman

expecting to add something because I was anticipating general conditions and terms. But to imagine that a Councillor in Mpigi District or Mbarara District, Kalangala will be paid the same. I think the Councilors will be paid in accordance with the ability of a District to pay. There is no way you can say under decentralisation when the districts are charged with generating their own Funds, working their own way and you say, no you cannot get more than what another councillor is getting in another area. I think what we need are just general guidelines as opposed to what has been before decentralisation, that a councillor gets so much. In fact what has happened, Mr. Chairman, in practice, although there was that general directive from the centre. What has happened is that some particular districts have sat and said, 'for us we cannot afford that night afford that night allowance. We can only afford Shs. 2,000/=. So, I know the Minister for Local Government gave a general Circular to say, please, pay according to your ability. If you are able to pay what is provided, well and good'. So, Mr. Chairman, I think it is dangerous to constitutionalise in this particular respect a standardisation formula of terms of service in form of remuneration. That is why I said I was adding a little bit more confusion.

THE CHAIRMAN: Now, he is looking at is the statement with effect that 'Parliament shall prescribe the guidelines for determination of the terms and service of then we just leave it as that.

MR. KAYONDO: Mr. Chairman, I am a Member of Committee 4. What we agreed on was that Parliament will not specify how much is going to be earned by the Chairman or a Member of the committee. But Parliament would give modalities how they would arrive at their various remunerations. So, I think what has been written here does not reflect. One of the reasons why we thought Parliament should come in, was that the Council would easily sit and allocate themselves all the revenue that is accruing in the district, and in fact this is happening in some districts where you find salaries and allowances constitute about 80 per cent of the total revenue collected. So, we thought at least Parliament should come in to give the guidelines and modalities how they would arrive at the various remunerations.

PROF. KABWEGYERE: Mr. Chairman, just to add one remark on hon. Kayonde's contribution. The Clause as it reads, *'Parliament shall prescribe the terms and conditions of service'* does not include salaries. Now that we are trying to protect public funds from individuals or councilors who may instead allocate themselves amounts that are disproportionate to the standards of the district, there should be no fear that all salary scales or allowances will be the same. We, however, wanted to keep within limits in order to avoid extremes. Very wasteful Councils or very mean Councils would therefore, be avoided if this general prescription is given. Thank you.

THE CHAIRMAN: Now let us have it drafted this way, that *'Parliament shall prescribe guidelines to be followed determining the terms and conditions of services of Members of local government councils.'*

MAJ.GEN. TINYEFUZA: Mr. Chairman, I want to clear my mind as to whether these guidelines in essence shall not really prescribe what type of remuneration it is going to be. It brings in the idea of who originates the district budgets. Should it be Parliament, or the District Councils as a concept? That is why I think that the Committee's Report is giving too much power to Parliament to originate these budgets and remunerations. That compromise position may not help us also to *-(inaudible)-* So, that is why I would like to appeal to the Chairman to consider allowing the District Councils to originate their own proposals with approval of Parliament as a concept, so that they are allowed. Parliament, however, should retain the power to approve. I find it safer that way.

THE CHAIRMAN: Parliament will throw them out. What do we do if so?

MR. ABU MAYANJA: Thank you Mr. Chairman. I find myself, as a democrat, unable to really support even the compromise. Parliament shall be elected by the people. The District Councils shall also be elected by the people. The same people who elect Parliament are the same people who elect the District Councils. But we are saying that Parliament has some divine wisdom. It is greater. If we follow this paternalistic way of doing things, we will not create responsible institutions more still if we cannot trust the Councils. The people who elect Parliament are the same people who elect the Councils, yet we think well as the people in Parliament will be very wise, very nationalistic, very concerned and they will not consider their stom-

achs. I think Mr. Chairman, this prescription is intended to stand in the way of the development of responsible local institutions. If we think that local councils should have responsibility to do things, we must let them have that responsibility and learn from their own mistakes. If councils instead enrich themselves and they do not do their duties, like providing services to the people, let the electorate rebuke them rather than Parliament. So, Mr. Chairman, I oppose this formulation as being undemocratic and unnecessary. Thank you.

MR. MASALU MUSENE: Mr. Chairman, I am surprised that hon. Abu Mayanja who is a Member of our Committee and who fully participated in the formulation of the Report which we have presented and as you remember I have not said there was a minority report, is turning round and wants to take us back.

MR. ELYAU: Mr. Chairman, I concur with your idea about giving the Parliament to guide because this is going to be a lot of uniformly done. There must be a basis and then the maximum depending on the activities. I see what hon. Bidandi Ssali was raising that in a Council people should have initiative to work harder so that they can actually be able to mobilise funds. So, that arrangement cannot still be left to the Council alone. It must be guided because here is a Central Government decentralising Funds and services. So, it must have interest in the Council. So, I think Parliament guiding as a purpose because the money which is going to the districts is the money of the Parliament. I thank you.

DR. MUGYENYI: Mr. Chairman, I am a Member of Committee 4. When we were discussing this Clause, we sat with most of the Members including the Mover of the deletion at City Council Chambers and, after a heated debate we all agreed on the position which Hon. Kayonde has given that we give Parliament powers to give only guidelines on the terms and conditions of service for the District Councilors. We did not give the Parliament powers to be the ultimate determinant of the remuneration of the Members of the local government councils. Mr. Chairman, we did this in view of what has taken place in the country. We were taking in consideration what we have been reading in the Papers and our personal experiences. In our Committee, Mr. Chairman, we have got a good number of Councilors who were guiding us from their personal experiences and we all came to the agreement that let us have on the two ends. Parliament giving general guidelines and then the ultimate amount of the allowance to be paid to a Councillor to be determined by the district. Because hon. Mayanja talked of the stomach. We left that determining on the size of the stomach to the district. We did not touch that one. We only said to protect the population, because we feel that in the Parliament although the Members may not be all that patriotic, but they are not interested parties, and the Councilors where they originate from, the Member of Parliament also originate from there to protect the interest of the citizens at the national level. So, in view of the corruptions that has taken place in some district councils, and so on, although some people are saying let us decentralise corruption, but we said we should put there sort of a check and that is why we said Parliament should give the guidelines and the District Council may determine its own amounts depending on its own revenue. So, Mr. Chairman., of Committee 4, really I would implore Members to leave Parliament residual powers. In fact what hon. Tinyefunza has said, in fact his proposition gives Parliament more powers because he is trying to give Parliament the final power to decide and I think that gives Parliament more powers. Because it is the ultimate decision maker on the issue, I think that gives it more powers and this one of the Committee is giving Parliament only powers to determine the guidelines. So, I would implore Members really to support this position which, Mr. Chairman, you have proposed and to refuse the deletion. I thank you.

THE CHAIRMAN: Now, can we decide whether we accept the Kayonde f formulation which reads *'Parliament shall prescribe guidelines to be followed by District Councils determining the terms and conditions of service of...'*

(Question put and agreed to)

THE CHAIRMAN: I now put the Question that Article 228 do stand part of the Draft Constitution.

(Question put and agreed to)

MR. MASALU MUSENE: Mr. Chairman, the Committee recommends that a new Article 229 be introduced to stand part of the Draft Constitution and to read as follows: *'Urban authorities shall have autonomy over their financial and planning*

matters in relation to the District Councils as Parliament may, by Law provide.

MR. WANENDEYA: I request the Chairman of the committee to clarify as to whether urban authority audits of finance should not be subjected to some external auditors. Mr. Chairman, I have seen a number of the autonomous bodies refusing to have their financial records audited by external auditors, and that creates some problems. May it be known to the Delegates that the, 50 per cent monies, left at sub-counties is not audited. I,therefore, seek to insert a rider that subject to regular external audits, urban authorities shall have autonomy over their financial and planning matters in relation to the District Councils as parliament may by Law prescribe.

MR. BYARUGABA: Mr. Chairman, I want to inform hon. Wanendeya that the monies left at the sub-counties are audited by both (1) auditors within the districts (internal auditors) and later the external auditors.

DR. BYARUHANGA: Mr. Chairman, I wanted to draw the attention of hon. Wanendeya to Article 190, 1 (b), which reads as follows:
'The functions of the Uganda Audit Commission are to audit the accounts of all Government departments and of all institutions and organisations in which Government holds a controlling interest, including the accounts of all local government units and other authorities which receive any grant from or otherwise are financed by Government.'

DR. MAGEZI: Mr. Chairman, we are talking about financial autonomy of urban authorities. The present statute is very clear. In urban authorities, the sub-counties do not, I repeat, do not receive the 50 per cent, hon. Wanendeya is talking about, unless this matter is re-interpreted by the Ministry of Local Government. In this case, the matter he is raising does not affect the urban authorities at all.

THE CHAIRMAN: I now put the Question that Article 229 do stand part of the Draft Constitution.

(Question put and agreed to)

MR. MASALU MUSENE: Mr. Chairman, the Committee further recommends that a new Article 230 be introduced to stand part of the Draft Constitution and to read as follows:

'No person shall hold concurrently on a full basis political offices (a) in the service of the Government and that of the Local Government; or (b) in the service of a higher Local Government and that of a lower local government.'

Two - In this Article political office means the office of a Minister, a Member of Parliament, a Member of local government council, a Member of a standing committee of a local government council, a resident district commissioner or any other office prescribed by Parliament.

DR. MAGEZI: Mr. Chairman I wish to introduce a new Clause because there an element which I think needs to clear well in our minds. That is that the District Chairman and some Secretaries as the Council may decide, will actually be on full time employment in the District. This matter we have not catered for in the new Article 210, and I would like therefore, Mr. Chairman, with your permission, to move a new Article (c) after (a) (b), reading like this: *'For avoidance of doubt, the District Chairman, and such number of Secretaries as the Council may decide, will be full time employees of the District.*

THE CHAIRMAN: Hon. Magezi, they are not employees. I think what you are looking for is the statement that the Chairman and his Secretaries shall devote their time on a full time basis to the service, thus, during working hours they should be there.

MR. SEBI DATA: Mr. Chairman, the drafting could come in but exactly that is what I mean to say that, for avoidance of doubt the chairman and such number of secretaries as the council would decide will be on a full time basis-shall be on a full time basis in the service of the...

THE CHAIRMAN: Shall attend to the work of this council on a full time basis, but does that fall here or should fall at the point where we created the secretaries and chairmanship. And two; why do you choose some secretaries and leave out others.

AN HON. DELEGATE: Mr. Chairman, since we do not know the number of secretaries, and depending on the budget of the district, they may find that it is not really-the district cannot afford to hire the services on a full time basis of all secretaries. Secondly, when we were discussing- when we

referred this article 210 to the committee, this is a matter which I raised in - the debate here. But I have been consulting the chairman, and it was missed out altogether.

THE CHAIRMAN: But for me I would have taken it like we have approved that the speaker of this council would be on a part-time basis. But that the district executive would be housed by even the district or provided with the allowance in lee of accommodation to attend to matters of the district. Do we have to state it here specifically; okay let us hear from the floor because he has expressed a serious point of concern.

MR. SEBI DATA: Thank you, Mr. Chairman. I would like to inform hon. Magezi, that while we were discussing this provision, we consulted with some experts from local government, and their advice was that, as politicians the secretaries should not be full time employees or even workers in the office of the chairman. Infact a good number of us bought the idea that for effectiveness, politicians should not be full time employees in the chairman's office. Mr. Chairman, I am a member of the district council in Arua, and my experience has been, that if you have the politicians in the chairman's office all the time, conflict with the Civil Servants is often the result of interference. I would,therefore, like to inform hon. Magezi that we bought the idea and we feel that the secretaries should not be full time employees. They should not sit, full time in the office of the Chairman. Thank you.

PROF. WADADA NABUDERE: Mr. Chairman, we are not talking of experience of a district to which hon. Sebi is referring here. We are creating a district government with comprehensive powers. We have vested the powers of central government and we have said that the rest of the powers belong to the district, and these people are supposed to fulfil these functions on a daily basis. So if the chairman of the district is equivalent to something like a Prime Minister of the district, surely he must be full time.and his secretaries who are responsible for various departments are expected to that this question is being raised in this way.

MR. NYAI DICK: Mr. Chairman, I think we are mixing two things. We are mixing the current scenario in which the RC leaders of the district are not employed on full time basis. I think that the formulation on table is very simple in that an official should not hold an office in both the central government and local administration at one time. It is therefore not a question of whether the chairman should be a full time worker or not, but that one can not hold two jobs in different strata of society whether at national or district level. With this Mr. Chairman, I plead that you state the question for vote.

THE CHAIRMAN: Even then, the question raised by hon. Magezi still holds. Are the members of the executive committee and their Chairman full time employees of the district?

PROF. KABWEGYERE: Mr. Chairman, if you look at what we have already passed article 227, on remuneration, we have already passed that Parliament shall prescribe guidelines to be followed and terms of service. In that very statement, the terms of service can define whether the people are going be part-time or full time. But above that, we have mt said anywhere whether when we are talking about public service or when we are going to be talking about say ministers, we have not said so and so is going to be a full time person. Why is it necessary that we must say so of local government? I think so far we have had a period of 9 years with people who have been partly part-time, partly full-time and the conditions have determined. Now we want to be concrete as if we are pre-determining the future. I do not think really we should be so worried and to be here -*(Inaudible)*- about full time or not. So I do not think hon. Magezi should push it to any kind of division, I think he should forget it and we move on.

MR. TIGWEZIRE: Mr. Chairman, me I am intrigued by the office of the Resident District Commissioner. All along this morning we were trying to make this office appear as if it is not political at all, although we have\agreed that the President will appoint, he appoints other officers say, Permanent Secretaries who definitely after appointment do not become political offices. So I *am* wondering whether we should not delete the office of Resident District Commissioner,and I beg to move that we delete following this morning's debate *"a resident district commission"* because this man will be - Mr. Chairman, I do not think this man will be a holding a political office, this man will be working as a Civil Servant appointed by the President like in the case of a Permanent Secretary Mr. Chairman. So I beg to move.

MR. MUSALU: Mr. Chairman, what we are providing here is that, you cannot be a Resident District Commissioner and a:- councillor at the sometime, or a Member of Parliament as well as a Resident District Commissioner. In fact you will recall and Members will recall that those district administrators who were at the same time NRC Members were even asked to choose one of the . two. Even some are hon. delegates in this House. So this is all that we are providing to avoid daily allegiance and conflict of interest.

THE CHAIRMAN: But I of course, the worry is -it is destination of the word political office. In the morning there was a lot - many speeches were made saying they wanted Civil Servant,and you take a Civil Servant and you appoint holding a political office. him and then the constitution is saying - says he is I think this is where the problem is.

MR MASALU MUSENE: Okay, Mr. Chairman, then in view of what we have passed that there shall for each district be a resident commissioner, who shall be a senior civil servant appointed by the President now that means that as a consequential - consequentially I think we have now to leave him out of this Clause (2).

THE CHAIRMAN: Because if you are saying he should be senior civil servant -

MRS. RHODA KALEMA: Mr. Chairman, I am seeking clarification from you because I thought that hon. Daudi Magezi's amendment by including Clause (c) into 31, I did not know how we concluded that, and before we concluded that, the hon. Member over there brought in what was included in Clause (2). Mr, Chairman I wanted to supported hon. Magezi on this matter of full time of the chairman and his secretaries.

THE CHAIRMAN: But I think it was clarified that we have passed a provision which says that Parliament will set guidelines as terms and conditions of service of councilors. But at the sametime it was also said that we have not been repeating in the constitution that there shall be ministers who shall be on full time basis. We are saying that there shall be a cabinet consisting of so many ministers. But then it will be - just a special case here now to mention only when it comes to district councils.

MRS. R. KALEMA: Mr. Chairman, the reason why I think we should rally consider this and deliberate on it as hon. Kabwegyere has said, the government of the current districts has something similar to this, but here they just get allowances and the are not full time, and as a result they are not effective in most cases they are not effective,and they are not serious they are not full time they are not paid a salary. Now the government@we are - establishing are of the district committees-cf the district. We have already said we will have a chairman , a vice chairman, speaker, and a council and secretaries whom a lot of Members here have been referring to as ministers. Now because what is there today is different from what we are establishing that is why if you are going to have so many functions they will be giving them a lot of functions. If they are going to carry out these functions effectively. Mr. Chairman, they should be full time. Because unless they are full time then all the work we have been doing since we started with chapter 13 will be ruined because there will be no work, this government will not operate and we will not get anything out of these districts. They should be full time, and they should be paid a salary, and chairman and his vice and perhaps all these ministers as some of you call them, should be facilitated in order to be at the headquarters to run their government.

MR. MASALU MUSENE: Mr. Chairman, some of this I fell are details really which could as we already provided which could be prescribed by Parliament in the guidelines. Because for example, now if you look at Members of NRCs I do not know whether you can call them full time or not, but they are getting salaries, but they get salaries. So I think some this are unnecessarily details which we should leave to Parliament and not enshrined in the constitution.

THE CHAIRMAN: I think the general view is that we should leave it to Parliament to prescribe. Because I think we have agreed that the chairmen will be drawn from the council or they will be members of the council and the secretaries, and if they are then under the power of Parliament to prescribe terms and conditions of service of councilors also takes into account of those councilors who have other responsibilities.

MR. KARUHANGA: Mr. Chairman, I just wanted to draw the attention of the Members on page 4 of the report and the bottom (e) where we say that appropriate measures shall be taken to enable local government units to plan, initiate and execute policies in respect of all matters affecting the people within their jurisdiction. We need not say people will be full time or part-time, appropriate measures will be taken by the necessary people who are handling this. Really I do not think we need to go and start just chaining the cow on the peg so that the cow can be milked, what we need is just milk.

THE CHAIRMAN: So what we do is we pronounce ourselves on 230.

MR. LEANDER KOMAKECH: Mr. Chairman, I think 230 Clause (2) at the bottom of the page should be deleted if it does not say anything, apart from defining the words. We should, therefore, go to a different section, since the issue has already been defined in part one above.

THE CHAIRMAN: It is a definition of (1).

MR. KOMAKECH: Yes, but you can't put it to (2). Can you'?

THE CHAIRMAN: Yaa, you can, you can say, in this article as they have said so that whoever has read (1) knows what the phrase by political office means. Otherwise one may speculate what constitutes a political office. You can say anyone appointed by a politician therefore. So you narrow it down. I now put the question.

(Question put and agreed to.)

THE CHAIRMAN: The ayes have it and 230 stands part of the draft constitution. Item 35.

MR. MASALU MUSENE: Thank you, Mr. Chairman. Mr, Chairman, the committee recommends that Clause (1) of former article 228 now 231 be amended to read as follows. "Subject to the provisions of this constitution, Parliament shall make laws relating to local government and in particular, for the purpose of giving full effect to this chapter.

THE CHAIRMAN: Agreed, next.

MR. MASALU MUSENE: Clause (2), the committee recommends that Clause (2) be amended by deleting paragraphs (a), (b), (d), (g) and kx). The rationale behind this deletion is that, the provisions which are to be deleted have been taken care of in other parts of the constitution. The rest of Clause (2) as it is in the draft constitution is recommended to stand part of the draft constitution with minor amendments to read as follow: (2), without prejudice to the general effect of Clause (1) of this article, Parliament may make laws (a) now paragraph - old paragraph re-numbered (a), to read limiting the number of political offices that may be created by the local authorities.

THE CHAIRMAN: Agreed, (b).

MR. MASALU MUSENE: (b), enabling councils to make laws, regulations or other instruments for the administration of their areas of jurisdiction.

THE CHAIRMAN:Agreed (c).

MR. MASALU MUSENE: (c), providing that with appropriate modifications the system of government as it operates at district level, shall apply at the lower levels of local government units.

THE CHAIRMAN: Agreed. I put the question on 231 as recommended that it stands part of the draft constitution. I now put the question.

(Question put and agreed to.)

MR. MASALU MUSENE: Mr. Chairman, the committee recommends that article -former article 229 now reformulated 232 be appended to read as follow. Interpretation. In this chapter, reference to local governments includes; (a), district council, (b) an urban council, (c), the sub-county council, or (d), any other unit prescribed by law to replace any of the councils mentioned in paragraphs (a), (b) and (c) of this article.

MR. BAGEYA: Mr. Chairman, whereas I do not disagree with the submission of the chairman, I had a slight inclination which I strongly feel should be included and I had an amendment which I wanted to put after (b) to insert county division.

MR. MASALU MUSENE: Mr. Chairman, the county and divisions are administrative units, they are not local governments. This is because they do not have a budget, they do not have what, they are not cooperate, I think this is straight forward, Mr. Chairman.

MR. NDEGE: Point of order. Mr. Chairman, is it in order for the hon. Member to misinform this House when in the NRC a county and division are body corparate,and they receive 10 percent from the sub-county as a matter of fact. That is part of the 50 per cent. This amendment was passed by the NRC and it is on record that they are body corparate. Two; in 229 of the draft constitution, a county and sub-county are clearly spelt out. Three; we are representing counties, and I am sure they call them the county Saza Chief or something. These are all local government units. So I think that we were being misinformed first let us the record right then we look at the merit. Thank you, is it in order, Mr. Chairman?

MR. MED KAGGWA: Mr. Chairman, I just want to correct the erroneous impression given by the hon. Ndege by referring us to statutes well forgetting that we are making a constitution which will supersede the statutes the statutes they made in NRC. Thank you very much.

MR. BIDANDI SSALI: Mr. Chairman, it is wrong information to state that in that statute a county is a body corparate. It is not true, what it true is that a district council and a sub-county council and a division which *is* related to the sub-county are the body corparate.

THE CHAIRMAN: Then in that case let me put the question.

MR. KOMAKECH: Point of clarification. When Hon. Bidandi Ssali says that the county is only an administrative unit and not part of local government and that the local government institutional form goes down to the sub-county, I think he is trying to confuse Ugandans. If we want to be orderly and logical in the devolution of powers we should not keep on skipping some of the social institutions. How can we have a sub-county in a local government unit, and not a county. *(Applause)* A sub-county is a part of a county. The fact that under the 1993 local government statute, the present county tier is wrongfully bye-passed by the NRM government, does not mean they are right. I think we should do away with the word *"sub-county"* and retain county. I think the present sub-counties should be re-named counties. That way we are going to be logical, without confusing anybody. I think the RC3 committee can cooperate for development. I submit that we retain sub section (c) and call it county, knowing that for political purposes it is a sub-county. For administrative and political efficiency the parliament should be advised to do away the present counties and convert the present sub-counties into counties. Thank you.

MR. OGOLA: Mr. chairman, my position is exactly the same as Hon. Komakech's submission. Mr. Chairman, it is said in mathematics that a piece cannot be greater than the whole. So if we are talking about the sub-county we imply there is something bigger, and as long as we keep talking about that, we cannot turn around and say it does not exist, and only talk about its piece without the whole. Therefore, Mr. Chairman, we either look for another word which defines the sub-county or we go back to the Luganda word which is a Gombolola. Short of this, we should recognise the existence of a county. Thank you.

MR. KIVEJINJA (Bugweri County): Mr. Chairman, I propose that the county is put immediately after (b) so that we have in the set up of (a) district council (b) an urban council, (c) a county, (d) a sub-county and then move downwards. I beg to move.

PROF. SENTEZA KAJUBI: Chairman, I thank Hon. Ssendaula for the very important points he has made, that all of us have been elected from counties or a part thereof, A county is a very important unit even in our culture. In article 63 or 64 we have already guaranteed the freedom to enjoy one's culture. I should say, before districts came to be, at least in this part of Uganda counties existed. I would even feel embarrassed to go to Kyadondo and say that the CA delegates have abolished the notion of a county in the constitution. Mr. Chairman, Members of Parliament (NRC) have been elected from counties, and in order for them to go back and play a pivotal role in the development of their own constituencies which are counties, it is necessary that the county be recognized as an important unit of local government. It will be a great shame if those of us who are Members of the NRC go home and say we have abolished counties. That we have cut our roots because CA has created a new constitution. Mr. Chairman, I would like to appeal to Members of this august assembly to think very seriously about reinstating the notion of a Saza in our constitution. Thank you.

MR. SEBAANA KIZITO: Mr. Chairman this Motion talks about county/ division. Those of you coming from rural areas, are from counties, while some of us from urban areas, particularly Kampala district, are from divisions. The argument in favour of a county should, therefore, be the same for a division. I dis agree with the argument that a division is not an administrative unit, it is certainly one since we have an RC 3 in the division. RC 3 Makindye division, for example, has got powers to pass a budget and administer things below them. Therefore, the division must be included as suggested by the Motion. Mr. Chairman, Members have ably articulated the fact that Sazas or counties have been here from time immemorial; they were here before districts. Although I agree that Uganda is moving forwards, you should -the dictum goes- make new friends and keep the old. Even if we are moving forward and creating districts and so on, we should remember that we have got counties and in Kampala we have got divisions. I, therefore, support the Motion to the effect that we include in this article reference to counties and divisions. Thank you.

MR. BAGEYA: Mr. Chairman, I had a very humble feeling about what I brought up although it has caused a heated debate. I wonder why Members are willing to go along with (d) which says"any other unit prescribed by law to replace any of the councils, mentioned in paragraph (a,b) and (c); and not my submission. Mr Chairman, during the first RC elections there was no RC4 level, then the second time RC4 was introduced but then many people in the villages where I come from were very skeptical about accepting to be elected onto the RC4. In my particular district, Iganga, you will find that some members on the executive of RC3 are also members on the executive of RC4. In order to clear the confusion, it was once mentioned that assistant district executive secretaries will be heading the counties. I, therefore, thought the counties would be there. As far as I am concerned, there is a programme taking place right now; the *"Entandikwa"* programme. It is being based on a county. Now I do not see any reason this humble ammendment is creating such big heat. Let us pronounce ourselves here and today that there is no county whatsoever so that everybody knows in the country there is - no county rather than beat about the bush. The other day there is a county, now there is no county, it is a sub-county. Sub-county to what? Honestly, we were elected to this Assembly from the counties. Now when somebody says the counties are not necessary and at the sametime you accept that you will take up (d) which says that any other units which will be formed, and I am only reminding Members that as I stated in the rationale here, I thought it was omitted or it was an oversight. I wanted to remind members to put it up. I would like us to decide now on whether we should have the counties in our constitution or not, so that we can go back and tell our people that as far as counties are concerned, they are non-existent. Because we who come from counties are asked such questions.

MRS. MUKWAYA JANAT: Mr. Chairman, I want Hon. Bageya to clarify whether representation is the same as development, because what we are arguing here is where to put the mandate for people to distribute resources and utilise services provided. It is very unfortunate that Hon. Senteza Kajubi and hon. Bageya are threatening us into writing that is no county so that we go and mobilize the people. We should act maturely, over what we are debating here, Mr. Chairman *-(Applause)-* If we have not reflected parishes here, it does not mean we are abolishing them, neither does not highlighting villages mean that we are not going to continue having villages. What we are saying is that for purposes of development, the autonomy - the mandate to distribute resources- should be at the district and sub-county. If Parliament decides that the constituencies will be counties so be it. It would, therefore be wrong for anybody to suggest that we are abolishing counties. Anybody who will go back to the people and mis-interprete us or mis-represent us will be wrong. Mr. Chairman, I beg that you put a question on the understanding that we are talking about development and not representation in the Parliament. Thank you, Mr. Chairman.

PROF. SENTEZA KAJUBI: Point of order Mr. Chairman. Is hon. Janat Mukwaya in order impute that hon. Bageya and myself have threatened this House. Mr. Chairman, did you read any threat in our remarks?

THE CHAIRMAN: I think this matter should be left unanswered. Order, order. Let us agree on Hon. Bageya's Motion. Hon. Bageya thought to insert county or division as (b) then the rest will be re-numbered.and this is a Motion with the support of Hon. Ndege, Ollet, Hon. Senteza Kajubi and Hon. Onyoko David. I now put the question.

(Question put and agreed to.)

THE CHAIRMAN: I now put the question that 232 stands part of the draft constitution,

(Question put and agreed to)

THE CHAIRMAN: 232 stands part of the draft constitution. Hon. Masalu Musene item 37.

MR. MASALU MUSENE: Mr, Chairman, the committee recommends that article 230 Clause (1) as it is in the draft constitution do stand part of the draft constitution to read as follows; "Subject to the provisions of this constitution, the urban authority, in existence at the coming into forth of this constitution under the local government, Resistance Council's statute, 1993 other than the Kampala City Council shall constitute the lower local government units under the district councils within whose district they fall.

MR. MALINGA: Mr. Chairman, I would like to move an ammendment that we cross out the words, *'under the local government, Resistance Council statute, 1993.'* It does not change the meaning since those things are in existence.

MR. KARUHANGA: Mr. Chairman, I support Hon. Malinga in the sense that we cannot constitutionalize another law. So the removal of it makes no difference once we say what is in place is recognized, that is good enough. We should not at all as a drafting method constitutionalize a particular statute.

THE CHAIRMAN: Agreed. Next.

MR. MASALU MUSENE: Mr. Chairman, the committee recommends that Clause (2) as it is in the draft constitution do stand part of the constitution to read. Subject to the powers of Parliament, the laws applicable to urban authorities immediately before the commencement of this constitution shall continue to apply with such modifications as may be necessary to give effect to the provisions of this chapter.

THE CHAIRMAN: Agreed. I put the question on 233 to stand part of the draft constitution.

(Question put and agreed to)

THE CHAIRMAN: I would like to suggest hon. delegates that we go back to 195 which was stood over because of 227 so that we can then approve Clause (3). Now that we have passed 227 and set up these district service commissions, then we can approve Clause (3) to provide that the teaching service commission -where I think it will be called the education service commission -may by writing, delegate any of its functions to a district service or any other... I think they stopped there, they cut out any other authority. It is now okay we can pass it. I now put the question.

(Question put and agreed to).

THE CHAIRMAN: So we have pronounced ourselves on that, on 195 Clause (3). Which means we can now pronounce ourselves on 195 as modified, I think it was modified but it was not finally decided on because of that matter which was stood over. So we can say that article 195 as ammended - of the draft constitution do stand part of the draft constitution. I now put the question.

(Question put and agreed to)

THE CHAIRMAN: Now we have come to the end of this chapter but with a number of matters which have been stood over.

DR. KABERUKA: Mr, Chairman, I want to remind this Assembly that when we were dealing with accountability under finances, the plenary passed a Clause which we put to committee 4 to see how they would fit it in under the finances of local government, but I did not see it in their report. On accountability, we said that the accounting officer in charge of a district shall be accountable to the district council.

MR. MASALU MUSENE: Mr Chairman, I remember there was objection to that in the committee.

THE CHAIRMAN: I think it was done according to the Clerk's record in 212. The chief administrative officer shall be appointed by the district service commission and shall be chief accounting officer for the district, so it was done. What is now left in this chapter are matters which were stood over and I think some Motions which were being moved but had not been moved. I want to know from the various people, there was Hon. Nsambu with a Motion, whether he can be ready tomorrow.

MR. NSAMBU: Thank you very much, Mr. Chairman. I think tomorrow I shall be ready to start on it.

THE CHAIRMAN: May I ask Hon. Kaberuka whether his formula will be ready tomorrow.

DR. KABERUKA: Mr. Chairman, the work is a bit involving, and we are still gathering views, we have not put them together, so I will not be ready tomorrow.

THE CHAIRMAN: You see we stood over the - article 217 grants, we also stood over and referred to that committee the functions of the local government finance commission. We also have a Motion from Hon. Nsambu I do not know whether there are other matters.

MR. KARUHANGA: Mr. Chairman, I want to remind you that we have a few other pending matters which we could do, namely those on women and on ministers which we could do tomorrow. Whether ministers should be Parliamentarians and or whether they should be undermined in their constituencies.

THE CHAIRMAN: Have you carried out consultations?

MR. ELYAU: Thank you Mr. Chairman. On the part of the ministers, I think we should come after our recess, if we do it now, it will disturb our course of studies when we go home. We should tackle this very delicate issue with fresh minds. I suggest that we handle it after recess.

MR. ADYEBO: Mr. Chairman, I think now that you are giving us time for recess, we should also use this time for consultation,and some of these issues which Hon. Elly Karuhanga is jokingly stating that we should decide whether to allow ministers to be undermined in their constituencies, are important issues. Even those pertaining to women affairs and so on. We should defer them and make further consultations so that after one week when we come from our constituencies, we shall be in a better position to deliberate and decide once and for all. That is my appeal, because the issue dealing with the fate of the ministers arose in committee 2 where I am a Member. I suggested that we present it to the plenary. After further consultation, however, and knowing that I was also elected by my constituency, I realise that it is better you allow us time to make further consultations.

MR. ETONU BENEDICT: Thank you Mr. Chairman. I would like to add to Hon. Adyebo's contribution, that elections of the women as we debated, should involve the people, since they constitute the electorate. I think it appropriate for us to consult the people. In the same breath, for ministers to relinquish constituencies in which they are elected, after they are appointed ministers by the President concerns the people. We need to ask them, as to whether they will allow Etonu to become a minister and leave them unrepresented in Parliament.

MRS. SSEBAGEREKA: Mr. Chairman, I am of the view that we go and consult,and mobilize and get real views about the article 131 that we stood over for the election of women. I feel we still need more time and consultation and lobbying. I thank you.

MR. KAGIMU: Mr. Chairman, I seek to add to what the Hon. delegates have contributed. The question of deeming is really very serious. I think it should be deferred for us to widely consult. We have to consult our constituencies and the Lukiiko.

MR. NSAMBU: Hon. Chairman, I have not desired to take anybody by the horn, if there are people who want to consult others, and with your permission, I agree to postpone it, but definitely I shall bring it.

MR. BIDANDI SSALI: Mr. Chairman, I think what is before us is whether we should lose tomorrow or not. After all people will come here tomorrow waiting for administrative means and so forth, why should we lose a whole day. If one is not ready and the other, let us start another chapter tomorrow, okay? Let us have something to do tomorrow, we need to cover some ground. *(Applause)* Otherwise on the question of whether ministers should be Members of Parliament and not, what are you going to inquire about from the peasant on that particular issue? You are only postponing the issue.

THE CHAIRMAN: Hon. Mulenga will you be ready tomorrow?

MR. MULENGA: Mr. Chairman, I am not sure what you are asking about. Ready on which one?

THE CHAIRMAN: On judiciary.

MR. MULENGA: I do not think the technical committee have finished. The technical committee has not had time to go through it. Because we sat and finalised only yesterday.

MR. MASALU MUSENE: Mr. Chairman,, committee 4 has one more chapter left, that is chapter 18 which was tabled, and copies are already with Members, and they can remind themselves tonight to internalize so that we proceed with it tomorrow.

THE CHAIRMAN: Okay, tomorrow we will resume at 9.00 O'clock and we shall be taking chapter 18 general and miscellaneous.

(The Assembly rose and adjourned until 12th Wednesday 1995.at 9.00.)

THE REPUBLIC OF UGANDA

PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

WEDNESDAY, 12TH APRIL 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 4006]

Wednesday, 12th April, 1995.

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

PRAYERS

(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.

CHAPTER EIGHTEEN - GENERAL AND MISCELLANEOUS

ARTICLE 279 - TRADITIONAL RULERS.

THE CHAIRMAN: Hon. Delegates, we agreed yesterday that today we start on this *Chapter Eighteen - General and Miscellaneous.* This is from Committee Four and I will give the Floor to Hon. Masalu Musene to introduce the various provisions of the report.

MR. MASALU MUSENE (Manjia County): Thank you, Mr. Chairman. Mr. Chairman and Hon. Delegates, the institution of Traditional Rulers or Chapter Eighteen as a whole was carefully considered by Committee Four and after a lengthy debate, the Committee came up with the following recommendations. In this recommendation, especially in Article 279, the Committee introduced another aspect besides Traditional Rulers as it is in the Draft, we added Traditional or Cultural Leaders. We felt that it was necessary to add Cultural Leaders so as to widen the scope because Traditional Leaders would refer to basically the five or so traditional leaders which are known around the country but we thought it should be widened to cultural leaders because there are some cultures which are based on clan leadership and we thought that if people in such areas which value clan leadership so wish, then they would also maintain their cultural leaders in the same way as traditional rulers. We have, for example, in Okoro county in Nebbi District a Rwoth. It is a fact that there is such a leader and even in many other parts of the country. So, Mr. Chairman, without going into detailed reasoning of the committee I wish to go straight to the Articles one by one.

In Article 279, the Committee recommends that the same be amended to read as follows: - Clause (1): *"Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies."*

THE CHAIRMAN: I can see Hon. Atwoki is trying to oppose this.

MR. ATWOKI (Youth - Northern Region): Thank you very much, Mr. Chairman. Mr. Chairman, when we were in Committee Four, we tried to move an amendment to delete Article 279 and we still wish to move in the House that Article 279 be deleted. If you accept, then I will give my submission.

THE CHAIRMAN: Is that a Minority Report or what?

MR. MASALU MUSENE: Mr. Chairman, as I said before, there was such an attempt which was overwhelmingly defeated and the people who brought it up, because they were so defeated, they did not even file a Minority Report. So I am surprised that Hon. Atwoki comes up now.

THE CHAIRMAN: Hon. Atwoki, do you think you have a good chance?

MR. ATWOKI: Mr. Chairman, I think I have a good chance if you could give me the opportunity to mobilise.

THE CHAIRMAN: We cannot wait for you to begin mobilising.

DR. MAGEZI (Jinja Municipality East): Mr. Chairman, I seek clarification from the Chairman of Committee Four. I would like to know exactly what this Article means with particular reference to the issues now affecting the Ankole people. Does this clause mean the Omugabe of Ankole can exist tomorrow?

MR. WALEMBA BWAMBALE (Bukonzo County East): Thank you very much, Mr. Chairman. Mr. Chairman, I would like to clarify for most of the Members of this August House by defining the difference between a ruler and a leader so that

we can move on while knowing exactly what we are discussing, what we are talking about. Mr. Chairman, Select Committee Four decided - *(Interruption)*

AN HON. DELEGATE: Point of order! Mr. Chairman, I seem to be confused. Is the Hon. Member in order to discuss a concept which is not appearing anywhere? I have not seen anything about a cultural ruler!

THE CHAIRMAN: Hon. Walemba, I thought you were going to answer the question raised by Hon. Magezi but now you are raising a matter which is not at debate.

DR. BYARUHANGA (Kitagwenda County): Thank you, Mr. Chairman. I wish to answer Hon. Magezi. There are two issues here. One is the wishes and aspirations of the people of the area concerned and two is whether those people have ever had or whether their cultures and customs and traditions include the office of a cultural leader. Now, in the case of Ankole, they have never had a cultural leader although in the past they used to have a ruler.

THE CHAIRMAN: But I think the point here is this, what he wanted to know is how far does this one go in relation to say the institution of the *Omugabe*? I think the way it is written, it may exist in any area of Uganda, Ankole is part of Uganda. In accordance with culture, customs and traditions, how does one become that? How many drums do you have to jump and play so that you are initiating yourself towards or in accordance with the culture or the wishes and aspirations? I think really it is a question of interpreting it against the culture and customs of the area plus the wishes and aspirations of the people. Mr. Awori, I do not think we should really waste much time on it.

MR. AWORI (Samia Bugwe North): Mr. Chairman, I am seeking further clarification from the committee Chairman on a matter of definition. Mr. Chairman, we are discussing or we are proposing to establish an institution not a person. An institution comes with certain aspects of social life, it could be cultural, political or economic. Mr. Chairman, it is evident here that we are totally silent on the political aspect of the cultural leader. Politics is part of a peoples culture - *(Interruption)*. Mr. Chairman, when we talk about politics, some people assume I am talking about partisan and non-partisan politics and such like. So essentially I am asking what is the complete definition of a cultural leader? Is it an institution? We better be clear. Mr. Chairman, I am sure people from the legal tradition will confirm that the worst thing you can do in law is to be ambiguous and we are trying to establish a law which is fundamental so ambiguity should be the last thing to be seen in this constitution. *(Interruption)*

THE CHAIRMAN: Hon. Nabudere.

PROF. NABUDERE (Budadiri West): Mr. Chairman, the Hon. Member is raising a question which is being dealt with in Clause (5). In Clause (5), there is a definition of a traditional leader or a cultural leader. In the same Article, the Committee has provided some definition so you can see that and see whether you agree with it or not and amend it.

DR. MAGEZI (Jinja Municipality East): Mr. Chairman, I really feel that a constitution which is vague can lead a society to a lot of problems. The way we have defined how the traditional or cultural leader may exist, we know that it is erroneous and it could, therefore, be misinterpreted. The cases are there. In Busoga there are three or four people who are claiming to be traditional leaders.

THE CHAIRMAN: And how are you sorting it out in Busoga?

DR. MAGEZI: It is supposedly to be a matter addressed by the law courts, somebody is trying to put up a case but the present law is so vague because it says "if the people so wish". Mr. Chairman, you know what is happening in Ankole. I think they were even trying to enthrone a king there. Now, for the purpose of good governance, I really buy the idea of Hon. Atwoki that this subject, unless it is properly defined and the way one can exist as a traditional leader is properly laid out in the constitution as we have done for so many other titles in the constitution, we should delete this clause on traditional leaders. I support Hon. Atwoki.

THE CHAIRMAN: Let us have Hon. Maliro and then we pronounce ourselves on this.

MR. MALIRO (Mwenge County North): Thank you, Mr. Chairman. I want to make a bit of clarification to Hon. Magezi. It is stated here that

in accordance with the culture and customs. I should think that in Busoga, when they started the institution of the Isebantu, they must have had a custom or a tradition or a culture which they were following. If it was a person who was a first born in the clan, if it was a person who was a last born of the second wife, then they should follow that one and use that culture and custom to instal the rightful king. If not, they can resort to court. As for the question of Ankole, I think there is something very clear about it. If we have passed Article 64 which says that people are free to form and belong to a cultural institution and if we are saying here that such an institution can exist anywhere according to the wishes and aspirations of the people, it means at one time or another when they so wish, they can follow the right channels and have that traditional leader. As a traditional leader, he is not a ruler. Since he is not a ruler he can exist even for twenty people, if twenty people so wish they can have that person since he is not a ruler to rule over others who do not want. I do not see any controversy here or anything which will cause conflict as far as I am concerned.

MR. BANTARIZA (Buhweju county): Mr. Chairman, I happen to come from the former Ankole. When you say "if people so wish", you mean two or you mean ten people because this thing is really confusing. Some people have now said twenty but how can you rule twenty people? - *(Interruption)* - Yes! Let him be a leader but because when you start having these small groups for culture, how many cultural leaders will you have?

THE CHAIRMAN: But Hon. Bantariza, if someone chooses to call himself a traditional leader and he rides through the streets of Mbarara or let us say he goes through Buhweju and the people look the other way and only twenty look at him, then of course there is a real problem there. I think let us make a decision on this one. I will have only Hon. Gumisiriza and Hon. Ben Wacha.

LT. GUMISIRIZA (Ibanda North): Thank you very much, Mr. Chairman. I have no problem with this amendment on Article 279 Clause (1) but I would like to move a small amendment to insert the word "majority" so that it reads: *"Subject to the provisions of this Constitution the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the majority of the people to whom it applies"*. I beg to move.

MR. BEN WACHA (Oyam County North): Thank you, Mr. Chairman. Mr. Chairman, Sir, I am also uneasy about this phrase *"in accordance with the wishes and aspirations of the people to whom it applies"*. I was going to suggest to the chairman of the committee to consider instituting another clause to empower Parliament to make laws for the determination of the wishes of the people. It is important because as it stands now, we do not know how to measure what wish the people have, how many people should determine that wish. If therefore we constitute a clause to empower Parliament, Parliament may therefore come out with a law to the effect that a referendum for this can be a determining factor as to whether the people wish for that office or they do not wish for it.

THE CHAIRMAN: I thought this was empowering the people of a particular area with regard to their cultural institutions rather than calling in someone from Mt. Elgon to come and say that the King of Buganda should be by way of a referendum.

MR. BEN WACHA: No, Mr. Chairman, I am not saying that Parliament should - *(Interruption)*

THE CHAIRMAN: - because if it is coming to Parliament to take part in making a law to say that in order for the Baganda to have their king, they should have a referendum.

MR. BEN WACHA: Parliament is just going to concern itself with how to determine the wishes of the people. It is not whether the people want the king or not - whether the people want the king or not will arise from the methodology which has been instituted by Parliament.

MR. KAWANGA (Masaka Municipality): Mr. Chairman, we should not read this Article as if we do not know what is happening on the ground. We already know that there are traditional leaders in this country and there are people who recognise them. This is a fact which we are living with. In some cases, people have acknowledged them for a long time. The only instances where people are disputing the existence of those leaders, some say they want them some say they do not want them, but at the end of the day, it is the community which recognises that leader. That should determine that issue. It will be a terrible thing seeing that everybody including Parliament should come into deciding whether some people in Ankole or any other place should have a leader or not. I think whenever

there is a dispute on customary law or something like that, at the end of the day, that matter can be resolved in courts. When there was a question of the succession of the *Omukama* of Bunyoro, it was possible to resolve that. So really, if an institution has been set and somebody is disputing it, that is not unusual. The question is how do you resolve it. Now, making it a political matter by making Parliament decide whether people should go to a referendum or not is not the most safe way of doing it, it is going to cause more confusion. Now, having known that we have these traditional leaders and in most cases people are not disputing it, where they are disputing it, let them invoke the culture and traditions of those areas to resolve that issue rather than making it a Parliamentary matter. If you do that, you are going to open up a Pandora box to make that particular institution in that area a matter of Parliament and then it becomes political. Who decides what, it becomes national, it affects people who are not interested in it, other issues coming in causing more confusion for nothing in the country. So really those who want to resolve these things let them resolve them according to the tradition and culture of their areas and if they cannot resolve it, then let the matter be taken to court and there is a machinery for resolving this kind of matters and it has been done in the past.

THE CHAIRMAN: Now, first of all, what is the argument? That we should have this clause or not or that we should amend it to provide for a referendum? Because the Motion by Hon. Gumisiriza was in fact saying we must have a referendum because how do you determine the majority without going into that? I think let us vote - let us pronounce ourselves first whether it stands part of the Draft Constitution or not. There are those who want it deleted. Hon. Amama Mbabazi what is the problem? You do not want us to vote?

MR. AMAMA MBABAZI: Thank you, Mr. Chairman. I rise on a point of procedure because I thought Hon. Gumisiriza moved a Motion which was seconded by myself and the procedure we should follow really is to dispose of it.

THE CHAIRMAN: Okay, let us vote on it.

MR. AMAMA MBABAZI: - by debating it, giving him the opportunity to speak for the Motion and for me to support it then we can vote Mr. Chairman.

THE CHAIRMAN: We can ask the House because really we are wasting time. This is why I am being reluctant to allow a debate for its own sake - *(Interruption)* - from the survey on the Floor. Okay, let us do it this way. Hon. Gumisiriza will introduce his Motion but Atwoki's Motion extends beyond his but it was not seconded.

MR. ATWOKI: It was seconded.

THE CHAIRMAN: Okay, let us discuss Atwoki's first to delete the whole thing but I do not see a seconder. Okay, Hon. Atwoki and then I will hear the Hon. Seconder.

MR. ATWOKI (Youth - Northern Region): Mr. Chairman, thank you very much for giving me the opportunity - *(Interruption)* - Mr. Chairman, my intention of moving this Motion is not really that I have a serious phobia in relation to the institution of traditional leaders. Mr. Chairman, my prime intention was to ensure that the idea should not be constitutionalised. The idea of traditional leaders should not be put in a political document. We envisage that this institution will be apolitical and now here is a situation where we are trying to entrench an apolitical institution into a political document. Mr. Chairman, in future this could be a subject of controversy. I would implore fellow delegates to think seriously about the issue of constitutionalising the institution of a traditional leader. Mr. Chairman, you will also see that there is no objective criteria to really determine those who are wishing and those who are not wishing to have. I believe that this could also be another situation which will cause conflict in the community. We are saying, if we talk of a referendum to determine those who wish, it will become political. Now, we are saying we should go to the courts, we are saying we should try to get the approval of the community concerned but there are certain situations on the ground which have proved that in certain areas like Ankole, the community on the ground has even failed to resolve this. Mr. Chairman, I also believe that our culture has been in existence even before the idea of legislating for society governance came into being. Now, here is a situation where somebody is trying to legislate for my culture which has been in existence even before we thought of this idea of legislating of how society should be managed. I think we are just trying to lift the idea of traditional institutions to such a high level which it does not even deserve

Our society has been in existence even before the colonialists came here. Our traditional institutions were functional, everything was in place. Mr. Chairman, we have also provided in Article 64 that we have the right to culture and I do not think that Article excludes the idea of cultural institutions or traditional leaders. Mr. Chairman, I believe that this provision of Article 279 should be deleted so that we do not bring some other institutions who have suffered in the past into the same fate which might arise in future. I am just requesting those who are very much interested in the institution of traditional leaders not to constitutionalise this issue so that in future somebody might focus on it or use it as a bargaining force against you. Thank you, Mr. Chairman.

PROF. NSIBAMBI (Presidential Nominee): Thank you, Mr. Chairman. I would like to oppose that Motion very strongly. Members will know that in Article 64 we made an enabling provision for people to enjoy their culture and maintain their cultural institutions. In other words, when you create an enabling provision, you must subsequently concretise what has been facilitated for you to have and that is extremely important. We have been enabled now, subsequently we must clarify what we want. So that is the first statement I would like to make. The second point is that in the past there have been problems, problems relating to traditional leaders or rulers participating in politics. There have been questions of maintenance; there have been questions of precedence. Now, unless those questions are concretely addressed, we shall be burying our heads in the sand. So it is essential to clarify, define and overcome the past problems by having a clear article where all the past problems are clearly addressed. The third point is that there have been people who have been opposing these institutions because they have suffered from cultural intolerance and information distortion. Such people are being educated by this Article because when they read this Article, they discover that in fact they have been fighting secondary wars. So this Article is very essential because it is educating. In this country, we have fought so many secondary wars because we have not listened to each other and it is important that our children and our grand children should understand what we are talking about so that they are also educated. So the existence of this Article serves also to educate people present and people to be born. So it is essential to have it. I strongly oppose the idea of not specifying the details as we have in Article 279 and, finally, I would like to make the point that these traditional leaders are existing, it is a reality. If you are going to ignore a reality as Hon. Kawanga has said, may the Lord bless you.

THE CHAIRMAN: Now, I will have two speakers, one for the Motion of deletion and one against the Motion.

MR. BEN WACHA: Mr. Chairman, I want to make myself very clear from the onset. I believe in the institution of traditional rulers. My support for the deletion of this Article has nothing to do with my acceptance or non-acceptance of the traditional ruler office. I want this Article removed because of three basic reasons. One, Sir, I have already indicated that this is a very badly drafted Article, it makes no sense, it makes no legal sense, it makes no constitutional sense. It is bound to cause unwanted conflicts and confusion in future. What does the phrase "*if and when the people so wish*" mean? Who is going to be the measure for the wishes of the people? Who? Are we going to provide for some instruments elsewhere within the Constitution for measuring the wishes of the people? If we are not going to do that, if we are going to leave this Article as it stands, it is only going to bring confusion in future and we should not constitutionalise conflicts and confusion in our Constitution.

Secondly, Sir, I find it wrong for anybody to constitutionalise my culture. I believe in my culture, I believe that as an Assembly we have already provided for my enjoyment of my culture within the Constitution under Article 64. I think it is wrong now to say that this culture will be enjoyed in such and such a manner. I think somebody somewhere is trying to play a trick. As we provide for it now under this Article, it means somebody in future can turn around and remove it and, therefore, assume that my culture does not exist. I think it is wrong and I am not going to be a party to it.

Thirdly, Sir, I think this is a hood-winking mechanism. This Article provides for nothing, it is giving nobody nothing and nobody should leave this Hall thinking that because of the passage of this Article, his traditional rulership is enhanced in any manner. It is a hood-winking mechanism and people should accept that. That is why I am saying it should be removed.

THE CHAIRMAN: Now, those against the Motion, I will hear Hon. Tibamanya.

MR. TIBAMANYA (Kashari County): Thank you, Mr. Chairman. I oppose the Motion, Mr. Chairman. Traditional leaders or cultural leaders are important elements in society and so it is very important that they should be catered for in the Constitution. They wield so much power, they are treated as elders, they are opinion leaders and they are held in the highest esteem. You can not simply leave them out without providing for them telling them how much power they can have and how much power they ought not to have. Someone is talking about legislating on a culture putting it in the Constitution, it is not an abnormal. Most of the laws we make are a result of long customs and traditions. We only legalise them, we only put them on Statutes. Take the Human Rights, for instance, most of them are the things that are a part of our culture, that one is not unusual and that is not a strong enough reason to object to the institution of traditional leaders. I think we shall be saving a lot by defining the powers of these people than leaving them out. I thank you.

THE CHAIRMAN: So let us decide now on this one, let us decide on the Motion by Hon. Atwoki that Clause (1) of Article 279 be deleted. I put the question.

(Question put and negatived)

THE CHAIRMAN: Now, hon. Delegates, let us pronounce ourselves on 279 (1). Hon. Gumisiriza what is the problem?

LT. GUMISIRIZA: Mr. Chairman, I get concerned when you say we should pronounce ourselves when I had intended to move a very small amendment to insert in "*the majority.*" So I only request you, Sir, that you give me just two or three minutes to make a few brief statements about it.

THE CHAIRMAN: Who is your seconder? Okay, you are seconded.

LT. GUMISIRIZA: Mr. Chairman, thank you. Obviously, a number of Hon. Members have made reference to Article 64 which we have already passed. I am mindful of the contents of that Article but I would like also to remind them that a culture that can easily impair a unit of a country, in my own opinion I would argue that it should be a culture which is really to unite a country not a culture that can disintegrate a country. So what I am seeking here to amend is the insertion of only one single word "*majority*" to read as follows: "*Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the majority of the people to whom it applies.*" Now, the intention for moving this amendment is that while it has always been argued at various times that kingship is an aspect of a person's culture and it is his or her right to enjoy that culture, we also know that in this country, historically, a great measure of the aspect of these kingships in Uganda has not been not only cultural but also political.

So, as Hon. Aggrey Awori said, a traditional leader has got an aspect of political implication that is why I would argue that we insert in the "*majority*" because to instal a king in an area or in a region where there is no clear consensus, no clear majority to support it is to mean not only a bad law but a very absurd situation because you cannot say as someone said that, two or three people can have a king in an area. If you go according to the present law which was passed by the National Resistance Council, obviously I do not mean, the question of majority, I am not saying that the kingship of Buganda or of Ankole or of Mbale if it exists should be subjected to a referendum of a people of Bunyoro who do not know the cultures and traditions of the people to whom that kingship applies. I am only saying that it should be the majority of the people in that particular region where the kingship is supposed to reside or is supposed to preside. So I am calling upon Members, the indulgence of the Members, that they should look into this matter seriously, that it should be the majority of the people. Like in the case of Buganda, at least when you talk to a number of Baganda just at random, you will find that they want their *Kabaka*. So a king that is simply superimposed over a community of people with clear cut disagreement and objection is not only bad but very dangerous to the unity of that very community. I beg to move.

THE CHAIRMAN: Hon. Gumisiriza, you do realise that when you construe a law it speaks from time to time so if you put here, "*if it is the wishes and aspirations of the majority of the people to whom it applies*", it means that even those areas where they

have it now you can use that constitutional provision to conduct a referendum to determine whether they should continue or not? Okay, let us have speakers for and against the Motion. I will get Hon. Rukutana, you seconded the Motion and then someone against the Motion after Hon. Rukutana. Okay, I will hear Hon. Ngobi over there.

MR. MWESIGWA RUKUTANA (Rushenyi County): Thank you, Mr. Chairman. Mr. Chairman, before I contribute I will begin with commenting on the observation you made that once we insert the word "majority" it would mean that for every society which aspires to have a king, that we should first ascertain the majority. Mr. Chairman, I wish to point out that later we shall be moving another amendment to say that it is only in cases where consensus is not clear that a method be put of ascertaining whether the majority want the king or not. So that should not be a problem. That would mean that for the areas like Buganda, like Toro, like Busoga I presume, there would be no need for ascertainment but for other areas where the majority is not clear, the consensus is not clear, that is when we would require some act to be taken to ascertain the consensus. I am saying this, Mr. Chairman, to point out that it should not worry us because we are soon moving an amendment when it comes to an appropriate time.

Mr. Chairman and Hon. Delegates, you may recall that we passed Article 64 guaranteeing the rights of every citizen to enjoy his culture, cultural institutions and whatever. That would mean that if I am an individual, only one Mwesigwa Rukutana and feel I should have a king, I can profess and enjoy him and even form my own cultural institution and call it the kingdom of Rukutana or something. Mr. Chairman, it is very clear from the history of this nation that that would be very dangerous to some areas in Uganda. When we passed Article 64, there was one important unit we dropped. Article 64, the original context in the Draft Constitution was to the effect that every person shall have the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or creed or religion subject to the provisions of the Constitution provided the rest do not impinge upon the rights and freedoms of others or the national interest, especially unity. Mr. Chairman, I wish to point out that when we passed this Article, we removed the words *"the rights and freedoms of others or the national interest especially unity"*. So that means that if we are two or three people and we feel we can profess a king or a cultural institution, we are free to do that irrespective of whether it is for the unity of our society or area or nation or not because now we have constitutionally allowed any person to profess any culture. As I was saying, Mr. Chairman, it would be very disastrous to the unity of some sects of society and the unity of the nation at large. Mr. Chairman, much as some people in certain areas strongly profess and actually are eccentric on traditional leaders, there could be a number of other people who could be the majority who are equally or even more strongly opposed to a particular traditional or cultural leader. In the circumstances, if the minority, if the other small group exercise their right under the Constitution to profess their culture or cultural institution, what we would be having would be chaos. I want to give an example of Ankole, we should come down to earth. In Ankole, it is very clear from the submissions here and from the views and the memoranda of the people of Ankole that the majority of the Banyankole would not wish the Omugabe to be reinstated. Before anybody seeks clarification, I have stated this one - *(Interruption)* - I am not receiving information because on matters of Ankole I am adequately informed. I wish to add that from the amendment we intend to move, if anybody strongly feels that it is not true that the majority of Banyankole do not want *Obugabe*, we are going to say that if people feel that that is not true as people are saying, let us get a means of ascertaining what the wishes of the people of Ankole are. Actually, that is the amendment we want to provide to say that where there is controversy or where the majority or consensus is not clear, then we either go to a referenda or we look for some other legitimate means of ascertaining the wishes and aspirations of the majority of the people of that society.

Mr. Chairman, the reasons are historical, I do not need to go into them. All I am saying is that as a matter of fact, with overwhelming evidence, if *Obugabe* was reinstated in Ankole, you would have dealt a blow to the prevailing unity in the sects of Ankole so far. There was a time when we had *Omugabe*, the historical consequences are well known, I do not want to repeat them. When *Obugabe* was abolished, I wish to state that the Banyankore became very united. The various sects ceased to separate the people of Ankole. The moment you reinstate *Omugabe* in Ankole, then you have reinstated those divisions and if divisions are reinstated in Ankole, then that means the peace,

the unity, the tranquility of the Banyankole and as a result of the people of Uganda, is undermined. So why don't we, may be I may be wrong to say that the majority in Ankole do not want *Omugabe* - let me admit I may be wrong, why do we not say that since it is controversial, it is not disputed, since the *Bugabeship* in Ankole is controversial, why do we not ascertain the wishes and aspirations of the majority of the Banyankole? Why have an institution manned by a minority which in its nature commands respect from each and every Munyankole to prevail when the majority of Ankole people do not want it?

Mr. Chairman, I wish to go further by saying that in Ankole when there was *Omugabe,* he was the *Omugabe* of Ankole and if we are talking of reinstating *Omugabe* by those few people who wish, he will be reinstated as *Omugabe* of Ankole but there are a very good number of Banyankole, more than eighty percent of the Banyankole who do not want to be associated with the *Omugabe*. So what do you or what will you call him? To me it will be an insult to say that this is the *Omugabe* of Ankole when I am a Munyankole - *(Interruption).* So I am calling upon Members to be down to earth and see the problems they are likely to cause in forcing some sections of society to accept a minority cultural institution or leader. Mr. Chairman, I will be talking more when we bring the amendment but for the time being, I am calling upon all reasonable Delegates to support this amendment.

MR. NGOBI (Presidential Nominee): Thank you, Mr. Chairman. I would like to oppose this amendment on the following grounds. First of all, we are talking about a subject which is well known to all of us. In society, you start with the individual, then the family and then the clan and you go on to have a leader, somebody who will be the leader of the community. This is a natural development. Now, if you have - in so developing you will have traditions on which you will base having that sort of leader. It is not something that is imposed upon its people and I think that in certain areas of Uganda the question of majority or no majority perhaps is not that much important but in other areas where the question is important, it is only an indication that perhaps either that leader was imposed upon the people or in which case he also acted very badly or you have a case where a leader was evolved voluntarily and if you understand the customs and the traditions, there should be no dispute as to who should be the leader if you have to have a leader. There are some areas where a leader perhaps is not desirable. This particular Article is not telling any particular community that you must have a traditional leader. If a particular community does not want to have a leader, so be it but this one is providing that where a community wants a particular traditional leader, then they should have him and I do not see the problem where this is the wish of the people where it should be a cause for any disunity. If, say for instance, in a community, 50 percent or 30 percent or 10 percent decide on having a leader and 90 percent does not accept that leader, of course, it is obvious that that leader will be ignored and there will be no problem to say that there should be problems. I think it is only ignoring the fact that that particular community perhaps has not got the firm tradition and customs on which to determine who a traditional leader is but if it has, there should be no problem and I would like to echo what some of the earlier speakers said in the previous Motion that the most important words are that "*subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions.*" This is the yard-stick and where this is disputed, the courts are there to settle it so that it can be decided according to the traditions and customs of the people. It is only where you have perhaps vague traditions - excuse me for saying so - in areas where you have vague traditions and culture that is where you will begin to doubt as to how you determine to have a leader but where this is firm, there should be no problem and I think it will be wrong for us to say that we introduce the idea of a majority in this matter so that you go into referendum. I will give an example. In the case of Busoga, for instance, we had several people who claimed to be the traditional leaders. We have invoked our tradition and culture to settle the matter and as we stand now, only those that want to cause confusion in Busoga, most of whom are from outside Busoga, will be the ones who are saying oh! there is a dispute there but really, there is no dispute to the extent of tearing up the community of Busoga and I think in other areas they are free to invoke their culture in order to settle that without having to bring in elections or voting or referendum.

So, Mr. Chairman, I am asking Hon. Members to appreciate that in society we have these leaders and they are very useful because they are opinion leaders as it has already been said, they do handle

matters that normally would involve people into either unnecessary fights or quarrels and they are a point of reference where you have a community. They do assist in the unity of Uganda and, therefore, we should oppose the question of majority and since we have already decided that we have traditional leaders where they are wished, let us carry on with that and depend on culture and customs to settle the disputes where they exist. Thank you very much.

THE CHAIRMAN: I will take two then we decide for and against the Motion. I will take those who are for the Motion, to amend.

MR. MUSHEMEZA (Sheema County South): Thank you, Mr. Chairman. I support the Motion by Hon. Gumisiriza and my basic argument is that traditional leaders or kings are not and cannot be a minority right. There are two aspects of this. Kingship and traditional leaders in general terms as political institutions historically developed with different characteristics. These institutions developed as feudal institutions which, in my view, are not in consonant with modern ideas for democracy. Mr. Chairman, if these institutions are to exist, as some exist today say in Buganda, they can only do so as a compromise to ensure that greater goals of unity are not undermined by those demanding those institutions. Therefore, it cannot be taken as a minority right.

The second aspect of my argument, Mr. Chairman, is that historically these institutions, Kingship for instance, emerged as an institution of expression of the existence of a specific nationality whether by conquest or at times by agreement, these institutions or Kingship has never been an institution of a small section, a clan, families of a given nationality or tribe. It is and has always been understood that Kingship and Kings acted as political heads of tribes or nationalities. This was the case at the time of colonization and, therefore, if you are to have a Constitution that will advance democracy, it can only do so in this by adhering to the wishes of the majority of a given nationality or tribe.

Mr. Chairman, again historically, Kingship is a clear expression of the dominance of a royal clan on the rest of the community. In democratic terms, therefore, Mr. Chairman, this cannot be constitutionalised as a minority right of the royal family and those around it. This is why the concept of the majority becomes very, very important. Mr. Chairman, I support the Motion and I beg Hon. Members to put this one as a way of allowing a certain community to determine how that institution can exist. Thank you, Mr. Chairman.

MR. MWAKA (Nwoya County): Thank you very much, Mr. Chairman. Mr. Chairman, I am against the insertion of the word majority in this Amendment. In a district where there may be six counties, people in two or three of them may belong to a particular clan and may practice a particular culture. These people must have every right to enjoy that cultural heritage. You cannot say that because they are few they should abandon their cultural heritage and begin to practice the culture of the majority. UNESCO conventions, Mr. Chairman, protect the rights of minorities on a number of issues, including the rights to enjoy that cultural heritage. In a matter of this kind, nobody is forced to pay allegiance to any particular culture, nobody is forced to prostrate before a leader if he does not wish to do that. That is a matter of seeing for yourself what is good for you and what is not good for you. In all our societies, Mr. Chairman, we are people who are bound to be leaders; some of us are bound to be Ssabalangiras, others are bound to be commoners like David Mwaka, but we all have a role to play in our society. Mr. Chairman, I strongly oppose this Amendment. Thank you very much.

THE CHAIRMAN: Now, let us decide. The question is on the Amendment by Hon. Gumisiriza that we insert the word "*majority*" after aspiration so it reads: "*Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with culture, customs and traditions or wishes and aspirations of the majority of the people to whom it apply.*"

(Question put and negatived.)

THE CHAIRMAN: Now, let us decide whether we accept the recommendation that Clause (1) of 279 be adopted as recommended by committee 4, I put it to question.

(Question put and agreed to)

MR. MASALU MUSENE: Thank you, Mr. Chairman. The committee recommended that Clause (2) of Article 279 reads as follows: "*The*

following provisions shall apply in relation to traditional leaders or cultural leaders; (a) the institution of traditional leader or cultural leader shall be a corporation sole with perpetual succession and with capacity to sue and to be sued and hold assets or properties in trust for itself and the people concerned."

(Question put and agreed to)

MR. MASALU MUSENE: (b): *"Nothing in paragraph (a) shall be taken to prohibit a traditional leader or a cultural leader from holding any asset or property acquired by him in his personal capacity".*

(Question put and agreed to)

MASALU MUSENE: *(c) "A traditional leader or a cultural leader shall enjoy such privileges and benefits as may be conferred upon him by the central government and local government or as he may be entitled to under the culture, customs and traditions of his people."*

(d) "No person shall be compelled to pay allegiance or contribute to the cost of maintaining a traditional leader or a cultural leaders."

PROF. NSIBAMBI (Presidential Nominee): Thank you, Mr. Chairman. I wish to move that Article 279 2(d) as proposed by Committee 4 be amended by deleting the following words: *"or contribute to the cost of maintaining a traditional leader or a cultural leader."* And by creating a separate Clause 279. 2(e) which reads as follows: *"A local government may contribute towards the cost of maintaining the office of the traditional leader or cultural leader. "* I beg to move.

THE CHAIRMAN: There was another Motion, my attention had been drawn to a Motion by Hon. Liiga and Hon. Sam Lokeris which sought to delete Clause (d). Do you still maintain that in view of the Motion by Hon. Nsibambi? Because should you wish to move, then we deal with yours first.

MR. LIIGA: Thank you, Mr. Chairman. I think according to our rules, mine departs furthest from the position taken by Hon. Nsibambi and his other colleagues. Mr. Chairman

THE CHAIRMAN: Now, have you liaised with Hon. Nsibambi, because the position is that Hon. Liiga would like to move a Motion to delete paragraph (c) and Hon. Nsibambi would like to amend it. So, we start with Hon. Liiga's Motion to delete.

MR. LIIGA: Thank you, Mr. Chairman. Mr. Chairman, I beg to move that Clause (d) as recommended by Committee 4 should be entirely deleted from the provisions of the Draft Constitution. This clause, fellow Delegates - *(Interruption).*

THE CHAIRMAN: He has been seconded by Hon. Lokeris. Please go ahead.

MR. LIIGA: Thank you, Mr. Chairman. Fellow, Delegates, the clause we intend to delete reads clearly as follows: *"No person shall be compelled to pay allegiance or contribute to the cost of maintaining a traditional leader or cultural leader."* Fellow Delegates, sometime last year if you recall, we passed Article 9, Clause 8 of the Draft Constitution which allows every Ugandan to settle in any part of this country and enjoy the benefits of the surroundings wherever he has chosen to settle. Fellow Delegates, Uganda is composed of various districts, full of various tribes and various peoples, cultures and political affiliations and what have you. Fellow Delegates, if we are going to live by the Constitution we are making, enjoy settlement anywhere in this country, then we should also keep in mind certain basic elements. One of the is the reduction of friction within the area. I will give a live example. During the take over in 1986, the people who were leaving in certain parts of Kyaggwe or in Mukono District remember very well what happened to the people we generally call the Badama who were hunted down, their houses destroyed, their properties burnt, some killed simply because they were taken not to belong to those areas. And this was brought about by the way some of them were behaving, but mainly because they had not developed that culture of tolerance, of living with each other in various areas. I was in Arua and I was very impressed when I was working there, the Waganda in Panyimur were very happy with their *matooke.* When we went to Paidha, that is where I used to buy my matooke from, it was being dug by a certain family of Baganda who could never, and up to now are still enjoying cordial and very good relationships around the area. They have not been forced to pay allegiance to the - *(Interruption).*

AN. HON. DELEGATE: Point of order! Thank you very much Hon. Liiga for giving way because I intended to give you information, but because you

refused, it is now a point of order. Is it in order for you to misinform this August House that the Badama who were in Mukono were expelled because of ethnic disagreement? What happened is that those people were extreme multi partyists and they misbehaved as youth wingers, and not because they did not align with the *Kabaka*, because *Kabaka* was not there at that time. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Well, I think you did not hear the Hon. Member properly.

MR. LIIGA: Thank you very much for that information, Madam Delegate, but I think political tolerance also comes in here. Mr. Chairman, when one chooses to live in any one society, in an area, there are certain matters which he has got to abide by. Here I will quote the example of the late Daudi Ocheng who lived and defended Buganda very vehemently even up to the height of the emergency in Buganda. He contributed positively and he had not been - he was not compelled, but out of his own wish, which this article seems to kill, he made great contributions to the development of Buganda. Mr. Chairman - *(Interruption).*

MRS. KALEMA: Point of information! Thank you, Mr. Chairman. All I want to inform the Hon. Member on the Floor is that - just to support his contribution - that in Nansana there is a whole RC Ocheng zone and everybody accepts it although Ocheng died almost 30 years ago.

MR. LIIGA: Thank you very much Madam for supporting my argument, and I am sure you will vote on my side thank you.

Mr. Chairman, there must be volunteering in whatever we do. I have noticed - Mr. Chairman, I will quote the example of the coronation of the *Kabaka*, booklets were passed by to collect money to enhance the occasion, now people whether Waganda or none Waganda contributed very voluntarily to this - they made these contributions voluntarily. If we had this clause in the Constitution saying that no person shall be compelled - okay, you could come round and say, here is the receipt book, give what you can afford and somebody - and I am very sure of this - will say I was compelled by my King, whatever it is, to make sure that I contribute, and it becomes a constitutional matter to decide by the law courts. Mr. Chairman, I think to cut out all these underlying currents, it would be safer if we did not include this in the Constitution. I will give one more example, Mr. Chairman, with due forgiveness from the people from Bugisu, there is this tradition of *embalu.*

Mr. Chairman, sometimes and indeed it happened last year, even people who do not identify themselves with the tribe fall victims to being circumcised in certain circumstances. Mr. Chairman, that type of thing would not take place if the society left, right and centre, knew exactly where we were going. If we have this provision as it is, we shall not even contribute to the cost of maintaining a traditional leader - there are contributions made by the clan leaders; all the Baganda here know what a clan means you start from the top and go down to the grass root. Somebody within there will come up and say I am being compelled to contribute, which will kill the spirit of the matter, Mr. Chairman. *(Interruption).*

THE CHAIRMAN: I think you better wind up your presentation.

MR. LIIGA: Mr. Chairman, I am winding up my presentation.I would rather, Mr. Chairman, and fellow Delegates, keep this silent by deleting this particular provision. You will even notice, Mr. Chairman, that the hostility to Hon. Nsibambi's Motion, bringing in an element of local governments being made to contribute to the maintenance of these traditional leaders arises out of one aspect, why should an Acholi living in Mukono pay his tax and part of it taken away to go and maintain the Kingship to which he does not contribute or ascribe. Mr. Chairman, the best way to keep all these undercurrents under control is to kill and delete a provision like this from the Constitution and we make a gentleman's understanding as we relate with each other in the villages over - you know, persuasion as we sit around in communities. But if we make it a hard and a binding rule as indeed it will be if it is passed in the Constitution, we are opening a can of worms or a Pandora box as we usually state here. With those words, Mr. Chairman, fellow Delegates, I still propose and I appeal to you to delete Clause (d) from the Constitution for a better Uganda. Thank you very much.

MISS BYANYIMA (Mbarara Municipality): Thank you Mr. Chairman. Mr. Chairman, we have many people in this country and, especially, in

Mbarara Municipality who have nothing to gain and nothing to lose from the institution of traditional leaders as it is now being prescribed. These people, and for whom I speak in my constituency would have something to lose if this Motion was passed. Unless we state very clearly that these people will not be compelled in any way to pay allegiance or contribute to the cost of a traditional leader, Mr. Chairman, their position of leave and let be, allowing others to pay allegiance to their King, will be undermined. They will feel that they are entering into something where they are going to be obliged to support an institution that they do not believe in. Mr. Chairman, our country is becoming more and more a multi-cultural society, we must take stock of the past that there is greater mobility and people are living next to each other, people of different cultures, this we must keep in mind when we are bringing back the institution of traditional leaders. We must be able to coexist without imposing on each other our different cultures. Silence is not enough, as the mover has been saying; he is saying that if we keep silent about it we shall find ways to resolve it. I do not believe that; silence is not enough. We have seen - I am sorry to say this - Mr. Chairman, the *Lukiiko* in action! We have not seen very much tolerance, some of us, and you do expect a change of heart and to see more tolerance out there in the villages. On the contrary, we may see a whipping of people to support that institution. It is not too much to speculate that the people may be whipped into something that they may not want to support. A gentleman's understanding, I think, is leaving too much at stake, it is not responsible for us to say that there will be a gentleman's understanding about this matter. We must put it very explicitly, and I would like to say lastly that volunteering will ensure the sustenance and the stability of these institutions. The moment we introduce there an element of coercion, then we are undermining that institution and eventually we are going to bring about its downfall. So, I appeal to those who believe in those institutions that let them be based on volunteering, and this particular clause that the mover wants to delete ensures that volunteering. So Mr. Chairman, I be to oppose the deletion.

MR. D. LUBEGA (Rubaga Division South): Thank you very much, Mr. Chairman. I beg to support the Motion as tabled by Hon. Liiga. Mr. Chairman and Hon. Delegates, as I support this Motion, I am conscious of the fact that if the proposed formulation in the report of Committee 4 was left to remain as it is, it will bring about a number of problems in legal interpretations, and it could even force people to go to courts of law. Let us, for instance, take the question of contributing towards the institution of traditional leaders, we have already passed or agreed that a traditional leader should exist constitutionally and become part and parcel of the leaders in a society, and these leaders of necessity either through by supporting culture or otherwise have to get their institution supported financially. Now, if there is a Budget in a district or any local administrative government or unit, and this formulation was allowed to remain in the Constitution, somebody can rise and say that it is unconstitutional for me who is a tax payer to pass the Budget which includes some financial contributions which are meant to go to the cultural or traditional leaders' institutions, and that person interpreting in that way is likely to have his opposition upheld by the courts of law. In fact, by leaving this -*(Interruption)*.

THE CHAIRMAN: Hon. Lubega, do you think that would be the case in view of (c) which we have passed? Do you still argue that will be the case in view of paragraph (c) which we have passed?

MR. D. LUBEGA: Well (c) says: "*a traditional leader or cultural leader shall enjoy such privileges and benefits as may be conferred upon him by the central government or local government.*" Now, this (d) if left to stand, will be actually contradicting (c) in my own view, because if a traditional or a cultural leader is going to enjoy such privileges, which privileges may include certain terms of money which are put aside for cultural institutions in which he is a head, so if you leave this one it will be contradicting actually. Now, besides, I would also like to point out to this House and you, Mr. Chairman, that we have many, many sections under Chapter Five of Human Rights whereby you are not obliged to do certain things which are contrary to your human rights. So, I cannot see how you can be forced even if we deleted this provision. You can safely delete out and you still can make use of various provisions in Chapter Five on Human Rights. So, Hon. Byanyima's argument that the inclusion of this will protect people so that such people are not forced to contribute or to do otherwise, I think does not stand. It is only a gentleman's agreement, it is actually - if you read Chapter Five carefully, you will find that you have a lot of protection, that you are not going to be coerced.

Now, turning to the recent history I know about, particularly here, for instance, in Buganda and maybe certain other parts of the country where we have institutions of traditional leaders, will reveal that people have been living harmoniously. In Buganda here, for instance, we have villages which are called Kitoro, Bufumbira, Kinyoro, there are so many villages here! In Natete in my constituency, we have a whole RC village called Kitoro. Now people have been living harmoniously because the majority of people it happens - the majority of Batoro settled there. So instead of spoiling this very harmonious existence by creating into our Constitution provisions which are going to contradict this set up, I think we will be calling for people to psychologically more or less move towards trying to fight without sufficient cause. So, the interpretation problems, the fact that if we pass this provision as it stands under Committee Four Report is contrary in a way to what we have passed in (c) and again given the history that people have been living harmoniously, nobody has ever been obliged to pay allegiance! In fact, even the history of Buganda, for instance, of late nobody said now you must kneel before the *Kabaka* or prostrate before him; No! Because we do not know of any case of a person who has not knelt before the *Kabaka* who has been taken away, even in the late '60s, so forth and so on. So, this provision is not called for. I, therefore, support strongly for the good of this provision the deletion. Thank you.

MR. KARURANGA (Nyabushozi): Thank you very much, Mr. Chairman. I am a member of Committee Four and in that committee we went to great length to bring two groups of people for a middle cross, two groups of people who are extremists. One was the group of the extremists who came to bring all sorts of Amendments which we had defeated there and which some of them have already brought here and defeated them. So, I said there were groups of extremists who came to our Committee, and we tried very much to find the middle of the road situation which was a compromise, and we carried out a lot of negotiations with these extremist groups. I am even surprised that in spite of all the agreements we had made with them, they have continued to come here with the same position which had been defeated in the Committee. Some of these groups have already presented their things and been defeated, now we have this other group coming in from the other side. Mr. Chairman, I want to inform the Members that (c) which has been passed was negotiated with a lot of involvement of Hon. Damiano Lubega and Prof. Nsibambi and others. This (c) which we came out with was as a real compromise, this (c) which says that: *"a traditional leader or a cultural leader shall enjoy such privileges and benefits as may be conferred upon him by central government and local government or as he may be entitled under his culture."* Now, we actually gave an opportunity for local governments to support traditional leaders if it passes in the council that so much be put to cultural evolvement. If the council says that we are voting our Budget and so much of it will go towards advancing our culture and maintaining our traditional institutions, so be it voluntarily. Those who feel that they cannot master a majority, let us say in case of Ankole if Bushenyi says they do not want to pay anything, they should be covered in (c), they do not want to pay anything!

Now, when it came to (d), it is important that we say Ugandans are free, the individuals are free and should not be compelled to pay allegiance to a traditional leader. I am sorry, I am going to mention some names of traditional Institutions; for example our friends from - the Rwoth, the culture is to carry him, if you get in there and they say carry the man and you say I do not want, it is going to be very difficult for you to live there. So, we want to be guaranteed that if I refuse to carry this man, I am constitutionally protected. The other one is, some cultures have a way of rolling on the ground when they see the King - now of course the people who are in the dry-cleaning business take advantage of this - so, if you are there and the man comes and you have failed to roll on the ground, they may take a collective action on you that you are - you just remain standing alone, and then they say "you man you are not following our culture!" So, it is very important that you should stand alone when everybody else is rolling, but for you you are protected to continue standing. I think Ugandans want to feel that this is not going to be interrupted.

Now, when it came to contributing to the cost of maintaining a traditional leader or cultural leader, since the whole thing from Article 64 is voluntary, since it is those who want to have the traditional leader - now, if they pass a law that people living in Buganda will pay a certain fee for the maintenance of the King and they come to ask tax from you, you should say no, I do not want to, I do not believe in that institution, and you should be free to be left to

continue going on the road as a free Ugandan without anybody hanging around your shoulders and causing problems to you. We must live and let live; there is no point in trying to compel anything. Now, the whole Clause looks negative, it starts: "*no person shall be compelled...*" It is, actually, not negative in a sense, it is actually a positive statement. It starts with "no" but it is actually meant to hold the institution of traditional leader without threatening it. If you make a positive statement and say people shall contribute, local government shall contribute, as Hon. Nsibambi has moved that local government shall contribute -*(Interjection)*- No, he has moved that a local government shall contribute towards the cost of maintaining -*(Interruption)*.

THE CHAIRMAN: No he changed it to "*may*".

MR. KARUHANGA: Well, if it is "*may*", then it is already passed.

THE CHAIRMAN: Because you see, I was also going to ask Prof. Nsibambi - but we have not reached there - in view of (c) having changed to "may" whether it was necessary, but we finalise with this one first.

MR. KARUHANGA: Actually, yes. What I do not really understand from our friends is how we sat with all these Amendments and then we came to a compromise in the committee, they did not move a minority report, now here they are -

THE CHAIRMAN: But Hon. Karuhanga, Hon. Damiano Lubega said that if you read (b) and (c) together it is possible that someone can argue that he is not prepared to pay taxes to a local government authority which budgets to support the *Kabaka*ship for instance. Do you read it that way? Would you like to say that "*no person shall be compelled to pay allegiance or make personal contributions*", So that it is personal contributions, rather than "*to make contributions*", because if you are paying taxes, inevitably you must be contributing.

MR. KARUHANGA: Yes, because, Mr. Chairman, one of the objectives in the Constitution, is that we should promote our culture and our cultural institutions - I am informed that it is clause 9, but in the objectives, I know that under the section on Culture, the government is supposed to promote culture, but I think your Amendment, Mr. Chairman -

THE CHAIRMAN: No, I was only trying to see how you read this together with the concerns of Hon. Damiano Lubega. Of course, that assumes that we do not pass the other Motion, but I think let us decide on that issue first. This is putting the cart before the horse. The situation now is whether (d) should remain or not, let us decide on that.

MR. KARUHANGA: Mr. Chairman, there is no way we can delete (d) and then leave the people of Uganda in the hands of no protection. I oppose the Motion.

MR. KABUGO (Nakaseke County): Thank you very much, Mr. Chairman. I stand to support the deletion of the clause. Mr. Chairman, if you leave Clause (c), you will find that local governments are permitted to make contributions by their own way in order to support the same institution and then come down and say that nobody shall be compelled to pay allegiance or contribute to the maintenance of this institution. Really it is contradicting yourself, because whether you support the institution or not, still the local authority or local government will have to use the money that you have paid in order to maintain the same institution to which you do pay allegiance. So, in this case, Mr. Chairman, it serves no purpose to hold it in this Draft Constitution. In this case, I suggest that it be deleted and we maintain (c) as it stands. Thank you very much.

THE CHAIRMAN: Yes, let us decide on this one. The question is that paragraph (d) be deleted following a Motion by Hon. Liiga. Let me put the question.

(Question put and negatived.)

THE CHAIRMAN: Now, Hon. Delegates, there is a Motion by Hon. Nsibambi, but I wanted to ask Hon. Nsibambi that in view of (c) which has been passed, and in view of your proposed Amendment to make it "*a local government may contribute*", does it make a difference?

PROF. NSIBAMBI: Thank you, Mr. Chairman. My Motion is two pronged, that is, it removes this question of forcing someone to contribute to the cost of maintaining a traditional leader, there is that dimension which is very significant. At the same time, it does allow those who would not like to be forced to pay allegiance to belong - because that one I conceived that element. With regard to (c) which

speaks of benefits and privileges, I am a little uneasy because those can be nebulous and depending upon the state of those who are in power, they may actually give benefits and privileges and exclude the whole section of maintenance. So, those were the considerations which made me to make this Amendment.

THE CHAIRMAN: You see, the difficulty we have, Hon. Nsibambi is that Hon. Liiga's Motion sought to delete (d) which has two parts to it namely; one of allegiance and the other of contribution. The House has rejected to delete both. So, now you are inviting us to revisit one of it - the other leg relating to contribution, and you also seek to insert a separate provision to say, "*a local government may contribute towards the cost of maintaining the office of a traditional leader or cultural leader.*" Maybe, when you speak of office, you go beyond just the leader himself or herself, otherwise I would have read (c) as empowering or enabling a local government to actually make a contribution very much like what you are proposing to move. But let me hear from some other Members and see.

PROF. NSIBAMBI: Mr. Chairman, if giving benefits also entails expressly the maintenance, and you are a lawyer, if you assume so, then I shall be delighted to be assured of that statement. With regard to the other issue of forcing people to contribute, Hon. Liiga's Motion took care of it and has been unfortunately rejected and we shall continue the struggle. But if you assure me as a lawyer, then I am willing -

THE CHAIRMAN: Okay, who would like to help me to interpret (c)?

MR. RUKUTANA: Thank you, Mr. Chairman. The Amendment sought by Prof. Nsibambi is adequately covered in (c) because what he seeks is to enable local governments who may wish to contribute to the cost of maintenance of the office of a traditional leader but (c) provides that a traditional leader or a cultural leader shall enjoy such privileges and benefits as may be conferred upon him by the central government and local government. Now, Mr. Chairman, when we say benefits, it includes any contribution or thing that the local government or central government may wish. The word *benefit* is wider by far than the sought specific provision of cost of maintenance. So, the cost of maintenance is included in the benefits. So, the sought Amendment does not add anything to (c), it is actually redundant, repetitious and serves no purpose.

THE CHAIRMAN: Hon. Migadde, how do you understand it?

MR. LUBUULWA MIGADDE (Katikamu South): Thank you, Mr. Chairman. Mr. Chairman, from the clarification of the lawyers, it appears that the Amendment by Hon. Nsibambi is actually covered under (c) but because of what has been clarified here, Mr. Chairman, it appears there is a contradiction between (d) and (c). In order to remove that contradiction, I am proposing a small addition on (d) to say that: "*No person shall be compelled to pay allegiance or contribute to the cost of maintaining a traditional leader or a cultural leader subject to clause (c)" -(Interjections)* okay, that is English, they say I should start with subject but I want to say subject (d) to (c).

THE CHAIRMAN: Is there any objection to that?

MR. MULONDO (Mityana County South): Thank you, Mr. Chairman. I feel that if we want to avoid contradictions, this (c) would have read as follows, Mr. Chairman, that: *"No person shall be compelled to pay allegiance to or make personal contributions to the cost of maintaining or the upkeep of a traditional leader."* If we can put the words "make personal contributions" in between "*to pay allegiance*", I think that would solve everything, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, in my view, Hon. Nsibambi's Amendment was actually narrower than (c) because you are talking about maintenance of the office of the traditional leader, whereas here we are looking at the cultural leader himself which he would extend to his office. Someone could interpret that by office you meant the cost of an office if he sets up somewhere but as it is in (c), it is open to say you have the following privileges which could extend to privileges at law and privileges which are actually material, as well as benefits which are material, and they can be determined to cover the whole range of things, because it is not narrow here.

PROF. NSIBAMBI: Thank you, Mr. Chairman. In the light of those comforting assurances, and I know they are recorded, I am willing to withdraw

that dimension dealing with maintenance. As to the issue of forcing people not to contribute to the cost of maintenance, it is a struggle, we shall continue with this struggle.

THE CHAIRMAN: But can I suggest that we -

PROF. NSIBAMBI: Therefore, I am willing to withdraw in the light of what you have articulated.

THE CHAIRMAN: Thank you, but I think there is a proposition on the Floor that we should not allow a situation where people will misunderstand (b) and (c) either we say "*subject to (c)*", or we say that "*no person shall be compelled to pay allegiance or to make personal contribution.*" Because otherwise it will be creating some internal conflicts. So, I would suggest that we take the proposition that "subject to (c), no person shall be..." Agreed? I think we take it as it is. Now, can I say that (d) stands as modified and we move on to (e). Prof. Nsibambi has withdrawn his Motion.

MR. MASALU MUSENE: Thank you, Mr. Chairman. Mr. Chairman, the committee recommends that Clause (e) which is (c) in the Draft Constitution be retained to stand part of the Constitution and it reads as follows: "*A person shall not, while remaining a traditional leader or a cultural leader, join or participate in partisan politics or influence or allow his office to be used for that purpose.*"

MR. BIDANDI SSALI: Mr. Chairman, I am worried about this provision. I am worried about the yardstick or who is going to determine the influence and the fact that the incumbent has allowed or not allowed his office to be used? I am seeing this as constitutionalising a seed for instability, which will not stop at the area which is concerned, but which might become national.

MR. ABU MAYANJA: Mr. Chairman, we cannot hear the Hon. Member speaking, can he speak a bit louder and in the microphone?

MR. BIDANDI SSALI: Thank you, Mr. Chairman. For the benefit of those who were not hearing, I was saying that I am worried about this influence and allowing his office. Who is going to determine whether somebody has influenced or has not influenced, has allowed or has not allowed? It may be straight forward to ask here some of us because of wanting to satisfy ourselves that this has been protected, but I am seeing a situation especially, now where a traditional leader, if you take for example the *Kabaka* of Buganda making a statement over what is happening, will this be intended to influence matters politically, is he trying to play his traditional role in guiding his people? Mr. Chairman, you did not allow me earlier, but on this one, Mr. Chairman, I think that we might perhaps talk at the level of partisan politics, but avoid to put in a Constitution something which is vague, which will be used politically by political leadership depending upon the relationship between that particular leadership and any particular traditional leader. Any single statement from a traditional leader can be interpreted by the government of the day, by the politics of the day as being influencing political affairs. Therefore, Mr. Chairman, in my humble view, I was of the opinion that we should stop at "join or participate in partisan politics" and we stop there. Therefore, I would like to move, Mr. Chairman -*(Interruption).*

THE CHAIRMAN: But let us hear clarification from the Chairman first.

MR. MASALU MUSENE: Thank you, Mr. Chairman. I wish to clarify to Hon. Bidandi Ssali, who is also a member of our committee and endorsed this recommendation that in law it is very difficult to state the exact answer to a particular situation. You see, law is not mathematics whereby one plus one is two. So, it is difficult to state a yardstick, but what we do is that you state the law, then when a situation arises, such a situation he is thinking of, someone complains and when one complains, then the matter is sorted out in courts of law. So, you cannot say that we must provide for such a situation, because we cannot know which situation will arise at any given time. I do not know whether that clarifies him, that how shall we know or how shall we measure the yardstick. It is really very difficult.

MRS. LAGADA (Women Apac): Thank you, Mr. Chairman. Mr. Chairman, in spite of the clarification which has just been provided concerning the last part of that clause, I still feel it is really going to be very difficult to ensure that this traditional leader or cultural leader does not participate in partisan politics, let alone influence the trend of events. Mr. Chairman, I want to take the example of what is happening currently. I am aware that the

Statute which brought back the institution of the present *Kabaka* of Buganda or the traditional leaders did not allow them to participate in politics, they are supposed to be cultural leaders, that is all and yet we have a situation, Mr. Chairman, where the *Katikiro* who is a direct appointee of the *Kabaka* has definitely been issuing statements. Now, in that case, what do we say; do we say the *Kabaka* has no influence on the *Katikiro* who is his appointee? I want somebody to clarify that for me because if now we are already having that situation, how sure are you that tomorrow you are going to be able to enforce this particular clause that we are putting in? Mr. Chairman, I want to give you another example.

I will take the example of the Church for example. It is not part of this constitution but I just want to give the example that in the last CA elections, in many parts of this country, the churches definitely participated in influencing the elections. Even when they did not directly say it, they gave it to their cadres, the deacons, and throughout the country, the churches influenced the elections. Now, supposing we put such a thing in this constitution, would you be able to take the Bishops to Court and say, why have you influenced elections? And, Mr. Chairman, this morning we have got a letter from the *Katikiro* dated 10th April, 1995, addressed to the Chairman. Mr. Chairman, I am sure you have got this letter, and all the Hon. Delegates have got it. Do you not think this letter is intended - *(Interruption)*

THE CHAIRMAN: It is addressed to the Chairman, and all Members of CA.

MRS. LAGADA: And all Members of CA have got it.

THE CHAIRMAN: But it is addressed to the Chairman, and all Members of CA.

MRS. LAGADA: Has this letter got no political connotation? Is this not trying to influence the trend of events here? Mr. Chairman, unless somebody can assure me that they are going to be able to enforce this, I can see a situation where you are going to have, maybe, to imprison the cultural leaders, or overthrow them, or do some such things. And I think that is a seed for conflict in this country, and I do not think, that is a good provision. Thank you.

THE CHAIRMAN: Okay now, let us be more structured. Let us get Hon. Bidandi Ssali to move his Motion, we allow a few speakers, and then we decide. His Motion is to delete some parts of the provision.

MR. BIDANDI SSALI: Mr. Chairman, I beg to move that - Mr. Chairman, I am trying to recast my conscience because when you did not see my arm on the previous one, I felt - but since you have gone so far, I beg to move that, (e) be amended to read: "*a person shall not, while remaining a traditional leader* - Mr. Chairman, I really beg your pardon. I beg to move that clause (e) be deleted.

THE CHAIRMAN: Are you seconded?

MR. BIDANDI SSALI: Mr. Chairman, after being seconded, I want to now give a few reasons. Now, the majority of the Members in this hall are focusing on a person remaining a traditional leader or cultural leader in terms of for example the *Mugabe*, the *Kabaka*, the *Omukama*, that type of thing. But I would like to submit, Mr. Chairman, that, in our culture, I am a cultural leader for the benefit of the people of Buganda, I am *omukulu wo'lunyiriri*. Now, in our tradition, I am a cultural leader. Hon. Nekyon here has told me he is a cultural leader in his area, Hon. Dr. Okullo Epak there, and so many others. Ssabalangira here is a cultural leader at that level. So, it is going to be very, very difficult, Mr. Chairman, to qualify who is - which traditional leader and cultural leader we are talking about. And yet I still want to participate in politics, so does Hon. Nekyon, and so on. That is why I have now moved far to say, let us delete it.

Secondly, Mr. Chairman, you see, in our traditional setups, there are limits beyond which these traditional leaders cannot go, in the interest of the group in which somebody is a traditional leader or a cultural leader. Just like Hon. Lagada has quoted the issue of a bishop. I think the traditional leaders or cultural leaders will have to adjust culturally and traditionally to the politics of the day. Just like the bishops do, instead of hoping that we shall put it in the constitution here, where we shall have no way of implementing through courts except by causing constant confusion and therefore, instability for this country. Therefore, I feel that this one should be done away with and leave it to the traditional leaders and the societies concerned to protect the continuation of their cultures. Thank you.

THE CHAIRMAN: The Motion is that, paragraph (e) be deleted. I will take a few speakers, one against the Motion. Who is against the Motion.

PROF.KABWEGYERE: Thank you, Mr. Chairman. I oppose the delete of Clause (e). Mr. Chairman, in the history of state formation, there have been, I think ,two major conflicts. One had been between kings and society, to the extent that the kings' powers have been reduced in some countries, the maximum is that, the king can do no wrong. In other words, he is so removed from public affairs. That is he cannot do anything wrong. Everything is done in his or her name if she is a queen. The other conflict has been between church and state. So, when Hon. Lagada was talking about the influence of the church, we know that the conflict has been there, but modern society has minimized this by separating church from state. And anybody who is familiar with the history of Christianity will know why we now have a state of the Vatican which is only a very small thing having remained from a bigger empire. But this was a result of the minimisation of interference of the church in state and vice-versa.

Now, Mr. Chairman, we arrived at this formulation after a long debate. The debate even led to inclusion of cultural leaders because initially, the issue was only of traditional leaders or even kings. Now, what we are trying to avoid here by being explicit is for any person who takes up that position to be at the same time, an instrument of dividing the people. If you are a cultural leader, you are therefore separated from any division that may arrive in that culture. So, it is not even a question of engaging in partisan politics at a national level, supporting one party against another, but it is also, even not supporting one group against another in the interpretation of the cultural traditions. You are supposed to be above board. Therefore, this clause, "*a person shall not while remaining a traditional leader, or cultural leader join or participate in partisan politics, or influence*." Now that is important - "or allow his office to be used for that purpose." Now, Mr. Chairman, from behind me here, there is a question of how do you measure? And Hon. Lagada referred to a letter that is in our pigeon hole. Now, Mr. Chairman, there is no way you could have a *Katikiro*, if there was no *Kabaka*. Therefore, you cannot separate the office of the *Katikiro*, from that of the *Kabaka*. Otherwise, political wisdom will be abused.

THE CHAIRMAN: - otherwise, we are not very keen on interruption but Hon. Ssebaana Kizito is a very well informed person on palace matters, I presume.

MR.SSEBAANA KIZITO: Point of information! Mr. Chairman, I wish to inform the Hon. Prof. Kabwegyere that it is possible to have a *Katikiro* without the *Kabaka*. For example, during the period 1966 to 1986, Buganda had a *Katikiro* in the name of Hon. J.S. Mayanja Nkangi, and there was no *Kabaka* at that time.

PROF.KABWEGYERE: Mr. Chairman, I have known Hon. Ssebaana Kizito to be a good debater, that is a point of debate that there was a *Katikiro* when the position of the *Kabaka* was not seen. But I think that there may have been a *Katikiro* only in memory. Certainly, I do not remember him performing any function as a *Katikiro* of Buganda. But that as it may be, it seems to me, if we have to define the office of the *Kabaka* or of the traditional leader - in this case of a traditional leader, now if there are other people who are spokesmen of that traditional leader, ultimately, the person in the office of the traditional leader is accountable. Now, in a case like the one we have here which seems to carry the headline that there is some silence. If silence takes on for too long, it may be understood that perhaps the traditional leader is also behind his spokesman because the *Katikiro* is the chief spokesman of the most important institution the *Lukiiko*.

THE CHAIRMAN: But would you say that the *Katikiro* to comment on our constitutional making process, it would be partisan politics?

PROF. KABWEGYERE: No, no! I think it is not partisan, but I am saying that in a case like this, you cannot pull him away from the institution. Because the reason why that is important is this question of defining the influence. Because if those who are associated with the traditional leader become articulate or articulator of a particular position, and that position happens to be partisan, then you may, by association or by influence, find yourself linking with the traditional leader. Therefore, the office is defined if it is used for the purpose. Now, there are two things here, there is a case where for example in this case we have a *Katikiro* who may say, I support Hon. Ssebaana Kizito, in his campaign in Makindye. You know, that is himself as an individual, but when he signs in the capacity like

Katikiro; I *Katikiro* support Hon. Ssebaana Kizito, or Prof. Kabwegyere, that becomes an institutional support, and therefore, it becomes associated with the office of the traditional leader. So, to delete this may land us into a situation where, traditional leaders may have license to engage in divisions by virtue of their position. And that will be dangerous. Because if leadership of culture is again confused with leading society, this can become a problem.

Mr. Chairman, I am going back in history when for example, the *Kabaka* of Buganda become the president of Uganda. The two positions were totally incompatible and from day one when he accepted to be the president of Uganda, the conflict - the confusion emerged. It was a total historical mistake. So, because they could not separate his office from the individual man who became the president of Uganda - So, Mr. Chairman, I think it is in the interest of protecting the traditional leader or the cultural leader that we limit him that he accepts that position knowing fully well that he is there or she is there for everybody, just as the queen of England is or the queen of Belgium. These people make sure that they can do no wrong. And you accept it to do no wrong. Those of us here who think that they can be cultural leaders or traditional leaders should know that. They go and be the *"Namuswa"* and just kept there, and they do that role, and they are recognised for that part you will play. Thank you Sir.

THE CHAIRMAN: That was opposed to the Motion to delete. I want someone in favour of the Motion to delete.

MR.ABU MAYANJA: I thank you, Mr. Chairman. I would like to whole heartedly support the Hon. Delegate for Nakawa, in his Motion to remove this article. Mr. Chairman, the way you see the debate going and the statements being made, it to some extent indicates the problems which we are facing in trying to state positively in the constitution, what are in effect and in fact constitutional conventions derived from the British constitution. We have an attempt to define the position of a constitutional monarchy viz-a-vis, his government or her government and parliament and so on. We know that in England the queen does not take part in partisan politics, she does not tell the people to vote for which candidate, and she accepts which ever party is elected to be her government for the time being. That I think is what was tried to be done here. But, Mr. Chairman, apart from the fact that we have already rejected or the assembly - I would not like to add myself, because this assembly has rejected the provisions which would have resulted in there being tiers of government, over which kings would be peculiar heads. So, there appears to be no reason now for bringing a provision which could be open to all sorts of misinterpretations.

Now, if I may start with the example given by Hon. Lagada, when a *Katikiro* makes a statement, it is not the statement of the *Kabaka*. When it is the statement of the *Kabaka*'s government of the day, equally when Mr. Major makes a statement, everybody knows that that is the statement of the Conservative Party or the government of the day. And nobody said that that is the statement from Burkingham Palace. In other words, the theory of constitutionalism presupposes that you have politicians who manage the affairs of the state like *Katikiros* and other officers who are free to take part in politics. But the monarchy himself does not influence the cause of politics, does not help people to vote for which party and not to vote for which party and so on and so forth. And he is only used as a unifying factor. He does not discriminate between his people. But if that is already causing problems and we do not agree, and people think that a statement by the *Katikiro* is a statement by the *Kabaka*, or a statement emanating from the *Kabaka*, you can see that when we go very far and we put a thing like this, we shall be having a lot of problems.

MR. BIDANDI SSALI: Point of clarification! Mr. Chairman, with this clarification, I beg the House to pardon, if I appear to be confusing. But I think I need to be clarified especially by you the Chair, and the Speaker by virtue of your discipline. I explained when I was moving my Motion that it would be difficult to distinguish between the cultural leadership. Now, I have been advised by two people of your discipline that on Page 3, paragraph 5 limits when it says: *"for the purposes of this article, traditional leader or cultural leader, means a king or similar traditional leader or cultural leaders by whatever name called who derives allegiance from the fact of his birth or decent in accordance with these customs, traditions..."* Now, this understanding excludes me, Ssabalagira, Hon. Nekyon and so on *(Applause)*. Now, if that is the understanding by Members of your profession, then I would like to beg pardon of my seconder or supporter, to say that, we modify our amendment to

only delete the words "*or influence or allow his office to be used for that purpose.*" But for it to remain, "*a person shall not while remaining a traditional leader or a cultural leader join or participate in partisan politics*" and stop there. I have explained, Mr. Chairman, if paragraph 5 takes care of that, and refers to king and the equivalent.

THE CHAIRMAN: Yah, it is equivalent. This is how one would read this under normal interpretation of the law. The word "king", controls the rest.

MR. BIDANDI SSALI: Then, Mr. Chairman, I withdraw my deletion amendment and move this one which stops at "partisan politics." Thank you.

THE CHAIRMAN: Okay. Now let us first of all be orderly. The mover on his attention being drawn to the provisions of a subsequent clause - Clause 5, although we have not passed it, is prepared to withdraw his motion and has withdrawn it. He is substituting it with another one which is: "*influence, or allow his office to be used for that purpose*", and simply make it as a statement that: "*a traditional leader or a cultural leader shall not join or participate in partisan politics.*" So that, that will be the only one. Now, the mover had explained this before anyway, because I think he changed his mind along the way to make the drastic move to delete. What I will do is to have one person for and against the amendment now, and then we decide. Okay, let me take those against the Motion.

MR. KWERONDA RUHEMBA: I thank you very much, Mr. Chairman. Mr. Chairman, I would like to oppose this Motion because I think it is a bit short sighted. Mr. Chairman, these words, "*or influence or allow his office to be used for that purpose*" are very, very important in that they are actually trying to protect the traditional leader. They are not meant to silence him, they are meant to wake him up and issue either a statement or disassociate himself from the misuse of his office. Mr. Chairman, I have an example which goes back to 1966. In 1966, there was a NewsPaper called *Sekanyolya* which I read, because I was already in Kampala here. And it issued a statement, and that statement is supposed to have originated from the *Kabaka* then or purported to have originated from the *Lukiiko*, I do not know which. But it was to the effect that the Central Government should quit Kampala City. The *Kabaka* or the *Lukiiko* did not disassociate themselves from that statement. As a result, they were actually in agreement with that statement. And what followed was a war, which war I think resulted in the exile of the *Kabaka*. Mr. Chairman -*(Interruption)*-

THE CHAIRMAN: Hon. Kweronda, there is a lot of information on the Floor.

MR. KWERONDA RUHEMBA: Do you think, I should take the information, Mr. Chairman?

THE CHAIRMAN: Take one from Hon. Kawanga John who at that time was at Kisubi.

MR. KWERONDA RUHEMBA: Okay.

MR. KAWANGA: Very correct, Mr. Chairman. I want to inform the Hon. Member on the Floor that the statement which he read in the *Sekanyolya* Newspaper was a decision which had been taken by the *Lukiiko*. So the *Sekanyolya* reported a position, it was not *Sekanyolya*, who took the position, then the Lukiiko took it after wards.

MR. KWERONDA RUHEMBA: In fact, that confirms my worries.

MR. KIGAYE: Point of information! Mr. Chairman, I would like to inform the speaker on the Floor that, the Lukiiko took that resolution on 20th May, 1966 at 10.30 a.m.

MR. KWERONDA RUHEMBA: I thank those, Mr. Chairman, who have informed me but I will continue with another example. Mr. Chairman, as we talk today, Itongwa is in the bush fighting for federalism, and recently he captured a Minister and he said that Minister was mistakenly captured and he wanted the Hon. Mover of the Motion for Nakawa - because the Hon. Mover is assumed he opposed the federalism in this House. Now, the office of the *Kabaka* has not issued a statement to disassociate itself from the activities of Itongwa. And I think that office may be abetting or aiding Itongwa.

THE CHAIRMAN: Hon. Kweronda Ruhemba, I think you have been unfair. Has the office of the *Kabaka* ever come here to demand federalism?

MR. KWERONDA RUHEMBA: I beg your pardon, Mr. Chairman.

THE CHAIRMAN: Has the office of the *Kabaka* ever come here to demand federo?

HON. DELEGATES: Yes.

THE CHAIRMAN: Wait. Order, order! The copies of the letters you see are from the *Katikiro*. But Hon. Kweronda Ruhemba is saying that, *Kabaka* has not disassociated himself. That would assume that *Kabaka* has come here and demanded *Obwakabaka* and that, Itongwa is acting for him. I think that is unfair. I think you should not -

MR. KWERONDA RUHEMBA: Mr.Chairman, these words which the Hon. Mover intends to remove from Article 279(e), I beg his indulgence and allow them to stay so that future traditional leaders or Lukiikos, or their offices can stand up and make statements if something has been done in their name so that they are cleared. But should they keep quiet, then it means they are consenting. So, Mr. Chairman, with those few words, I would like to request the August House to reject this amendment. Because if you delete these words, you are actually silencing the *Kabaka* and promising any statements that may be - because if you delete these words, you are actually silencing the *Kabaka* and promising any statement that may be against any activities that may be against it. I thank you.

THE CHAIRMAN: Hon. Delegates, I think let us be clear what we are debating. This provision here is talking about the traditional leader or a cultural leader not taking part or participating in partisan politics or influence. I hope that makes sense. Is it "partisan politics influence" or "participate in influence"? - But that is a different matter - "or allow his office to be used for that purpose." But while we are debating that, we should debate whether this is a good provision or not. But not to confuse it with the role of this House to pass a constitution for Uganda. And in doing that job, we should be open to all pressures, from all groups, including the Katikiro. Because they are all Ugandans. They are free to present a Bill, a request to Members. I do not read that as taking part in partisan politics. I read that as a part or group of Ugandans, seeking to influence the events of the constitutional making process, by in this case politicians writing. But I would not like to use that as a sign that the *Katikiro* or the *Kabaka* are taking part in partisan politics within the meaning of this provision. Because as we do our constitution here, may be some Bagisu may come down if you attack their cultural right, to come and protest in front of the Constituent Assembly, to make you not interfere with their right to cut themselves every two years. And I will not take that as partisan politics, I will take that, as bringing pressure or influence to bear on the constitutional makers which is a normal democratic process. So, I would not like some Members to be mixing the two.

Now, Hon. Kweronda Ruhemba, spoke in opposition of a Motion to delete the words "*or influence or allow his office to be used for that purpose.*" Now, can I get someone in support of the Motion?

MR. BATEGANYA: Thank you, very much Mr. Chairman. I wish to support the deletion of those words, up to "*cultural leader*". "Join, influence or allow his office to be used." I wish to support the deletion of those words on the following grounds. First of all, it is very difficult to determine where influence starts and ends. The idea behind leadership is to mobilise people into a certain direction. Let us take say, if the government of the day would wish to front universal immunization for say children, this is a necessary programme for all the children of the area and the country at large. It is possible for the traditional leader to be misunderstood, if he supports and goes out full blast to support such a programme, another party could claim say that, he is influencing events. If we take the last elections, one traditional leader is known to have encouraged his subjects to register for elections. Now, can this not be misunderstood to influence events in a certain direction? So, I would like to suggest that Members agree that we delete these words and we really make some progress, and go to the next clause. Thank you, very much, Mr. Chairman.

THE CHAIRMAN: Let us decide on this one. The Motion by Hon. Bidandi Ssali is that we could delete the words in (e), the words: "*or influence or allow his office to be used for that purpose.*" So that the paragraph reads, *'a person shall not, while remaining a traditional leader or cultural leader, join or participate in partisan politics.'* Now, let me put the question.

(Question put and agreed to)

THE CHAIRMAN: Hon. Delegates, now let us go on to (f).

MR. MASALU MUSENE: Thank you, Mr. Chairman. Mr. Chairman, the Committee recommends that, Clause (f) *-(Interruption)-*

THE CHAIRMAN: Hon. Tibamanya has got something before you go on.

MR. TIBAMANYA: Thank you, Mr. Chairman. Still on (e), it is not clear to me whether if a person wants to take part in partisan politics, and he is a cultural leader, it is not clear what he should do. And in light of that, I wanted to move a slight amendment to add on what we have already passed, to add there the following words: *"provided a traditional leader who wishes to join or participate in partisan politics shall first abandon his throne or stool."* I beg to move.

THE CHAIRMAN: Is it seconded? It is seconded but are you trying to shift? Supposing there is a custom which does not allow abdication? Are you trying to say that the Constitution now says you can abdicate?

MR. TIBAMANYA: That would mean he would never participate. But, I am against not allowing any Ugandan to stand for any office by virtue of this clause.

THE CHAIRMAN: Okay, let us get his Motion first. He is saying that, "*provided that a traditional leader or cultural leader who wishes to join or participate in partisan politics shall first abdicate his throne or stool*" - I do not know what stool means. We can say, "*shall first abdicate.*" Okay, that is the Motion on the Floor.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, I think Hon. Tibamanya has not appreciated the contents of this remaining part of the clause. It says, "*a person shall not, while remaining a traditional leader.*" That is clear that, if he is to be going to politics, then he shall cease to remain. But, as long as he remains, it is obvious he would need to resign, applicate or die, before he can join politics.

THE CHAIRMAN: Hon. Tibamanya, do you not think we are really adding what is not necessary - the person shall not while remaining a traditional leader -

MR. TIBAMANYA: Thank you, very much, Mr. Chairman. The difference between remaining and abdicating is that once you have abdicated, you will never claim back the throne. It is finished. If you want to stand to be a president of Uganda, you can, but once you loose, you do not go back to be a king. But while remaining means any time you feel like it, you can claim and be a traditional leader.

THE CHAIRMAN: And what is wrong with that?

MR. TIBAMANYA: Of course everything is wrong with that.

THE CHAIRMAN: Order! Because in America, you can begin as an ambassador, you become a Vice President, and you go back to ambassadorship. Depending on how your country wants to deploy you or your community. Why should we say that if you serve a state as a president of Uganda, you cannot go back and serve as a leader of your own community? I am trying to find - I do not think we should really waste our time on this one because the way it is, I had not seen the words properly, the one while remaining. That really I think answers it.

MR. MASALU MUSENE: Mr. Chairman, the committee in effort to emphasise the neutral role of a cultural or traditional leader especially as day to day duties of governance are concerned, are introduced to a new paragraph (f) to read as follows: *"A traditional leader or cultural leader shall not have or exercise any administrative, legislative, or executive powers of Central or Local Government."*

THE CHAIRMAN: That brings us to the end of (2). We go to (3).

MR. MASALU MUSENE: The Committee recommends that Clause (3) provides as follows: "*The allegiance and privileges accorded to a traditional leader or a cultural leader by virtue of his office shall not be regarded as discriminatory practice prohibited under Clause (5) of Article 50 of this constitution. But any custom practice, usage, or tradition relating to a traditional leader or cultural leader which detracts from the rights of any person as guaranteed by this constitution, shall cease to apply.*"

Clause 4: The Committee recommends that, Clause 4 provides as follows: *"For the avoidance of doubt, the institution of traditional leader or cultural leader existing immediately before the coming into force of this constitution shall be taken to exist in accordance with the provisions of this constitution."*

Clause 5: "*For the purposes of this article, the traditional leader or cultural leader means a king or a similar traditional leader or cultural leader by whatever name called, who derives allegiance from the fact of his birth or decent in accordance with the customs, traditions, usage, or consent of the people he leads.*"

THE CHAIRMAN: Now, let me put the question on 279.

MR. RUKUTANA: Mr. Chairman, though we have pronounced ourselves on (d) subjecting it to (c) - I mean 279 sub-article 2 (d) subjecting it to sub-article (c), I now see a problem on interpretation. The interpretation of article (d) subjected to (c) would actually defeat the intent of this Assembly. Look at page 2, those who are not with us. Mr. Chairman, when you subject article (d) to (c), it would mean that the central government or a local government may impose a tax on the people for purposes of maintaining a cultural leader. Yes! Because when you say subject to the provisions of article (c), no person shall be compelled to pay allegiance or contribute to the cost of maintaining a traditional leader or cultural leader. That would mean that, what is provided in article (c) may apply. And in article (c) we are saying: "*a traditional leader or cultural leader shall enjoy such privileges and benefits as may be conferred upon him, by the Central Government and Local Government or as he may be entitled to under the culture, customs and traditions of these people.*" So, if you subject (d) to (c), it would mean that a central government or a local government, may say one of the benefits we want to give to our traditional leader is to levy tax on each individual for the purposes of maintaining the cultural leader. Mr. Chairman, that would defeat the intent and the purpose of this provision. So, I was thinking that, before we pronounce ourselves on that, we may have to reconsider subjecting (d) to (c).

THE CHAIRMAN: I would leave this to the Technical Committee. But my understanding is, we are saying that taking money that is available to them, lawfully, available to them from the Central Government, that is money and facilities available to them. The Central Government and the Local Government, can grant a privilege or a benefit to a traditional ruler. But that, no person should come up and say that because of (d), I do not want that portion of my tax which came to you, to be used for that purpose.

MR. RUKUTANA: Then, Mr. Chairman, we get an express way of providing for that. The danger is, suppose a central government rose and said, we are according some benefits to our cultural leader, one of those benefits is a tax on each and every head towards the maintenance of the cultural leader, then that would mean that there would be nothing unlawful considering the interpretation of (c) and (d).

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, I want to respond briefly to what Hon. Rukutana has said. If we are being practical, there is no reason to imagine that a government, whether central or local would impose tax specifically for the institution of traditional leader against the will of those who do not want that institution. If it did, it would run a risk of being removed. But what I understand, Mr. Chairman, is we are giving authority or permitting this government as we have said, to use available funds, and I think Hon. Rukutana perhaps, when I re-collect what he was trying to move earlier, may want to block any means of contribution to that institution, coming indirectly even from the available funds. But I do not think really that this would be necessary because what (d) says is that no person shall be directly compelled to contribute to this institution which he does not believe in or he does not support. I think Mr. Chairman, that there is no cause for us to reconsider what we have passed. If Hon. Rukutana thinks it is very serious, he can perhaps try at the reconsideration stage.

THE CHAIRMAN: Let us pronounce ourselves on 279, that it stands part of the Draft Constitution. I put the question.

(Question out and agreed to)

THE CHAIRMAN: Now, Hon. Delegates, we have finished that article, but I think there is a recommendation there.

MR. MASALU MUSENE: Thank you, Mr. Chairman. Mr. Chairman, before we take leave of this article, Committee 4, in view of the fact that the institution of traditional leaders is very important and is an issue of a fundamental human rights to culture and unity in diversity, recommends that this article stands as a separate chapter in the constitution so as to stress its prominence and importance. Secondly, the committee felt that the other remaining articles are not related to this particular article

on traditional or cultural leaders. So, they recommend that it stands as a separate chapter.

THE CHAIRMAN: Agreed? And so the Technical Committee will work out and give it a number according to how they think it should fit in the whole sequence of events. Now, Hon. Delegates, we are coming to one O'clock, we can choose to finish and then go without coming back. I would like to suggest that we proceed. My deputy is attending a meeting of the National Insurance Corporation where she is a member of the board. And they are doing some important work there. And the Chairman is exposed to a slight malaria attack. So, I would rather we went on to finish. Otherwise, if we broke, I think I would rather go and sleep. Hon. Delegates, let us try to continue and see how far we go.

MR. MASALU MUSENE: Thank you, Mr. Chairman. Mr. Chairman, the committee recommends that Article 280 as it is in the Draft Constitution do stand part of the constitution to read as follows: 280 (a) "*Parliament shall by law establish an efficient fair and expeditious machinery for the administration and management of the estates of deceased persons.*" And (b): "*under the law referred to in paragraph (a) of this article, ensure that the services of the department or organisation established for the purpose are decentralised and accessible to all persons who may reasonably require those services and that the interests of all beneficiaries are adequately protected.*"

THE CHAIRMAN: Let me put the question on 280.

(Question put and agreed to)

THE CHAIRMAN: 280 stands part of the draft constitution.

MR. MASALU MUSENE: Mr. Chairman, the committee considered Article 281 which deals with the law Reform Commission and found that it was extremely detailed and that such details should not be provided in the constitution which is the basic guideline, but that these details could be contained in acts of Parliament as the circumstances and the duties of the Law Reform Commission may change from time to time. So, instead of all the detailed clauses, the committee recommends two clauses to provide as follows: *Clause (1)* "*There shall be a Law Reform Commission for Uganda, the composition and functions of which shall be prescribed by parliament*" - *by law.*

Clause(2): "*the Law Reform Commission established under Clause 1 of this article shall, publish a report on its findings and submit annual reports to Parliament.*"

THE CHAIRMAN: Agreed. I put the question on 281, that it stands part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Item 4.

MR. MASALU MUSENE: Chairman, Committee Four realised that in this country we have had tremendous problems of disasters such as famine, earthquakes, floods and so forth. And that, different ministries have not adequately lived up to the expectations of the people of this country as far as these disasters are concerned. It was therefore recommended that a new Article 282, on disaster preparedness and management be introduced to provide as follows: Clause 1: "*there shall be a disaster preparedness and management commission for Uganda to deal with both natural and man made disasters.*"

Clause (2): "*Parliament shall for the purposes of this article, prescribe the composition, functions and procedure for implementation of the functions of the commission.*"

THE CHAIRMAN: I put the question on 282, that it stands part of the Draft Constitution.

(Question put and agreed to)

MR. MASALU MUSENE: Mr. Chairman, the committee considered former Article 282 of the Draft Constitution and found that the way it is formulated is proper, and recommended that it stands part of the constitution to read as follows: Clause 1, "*where a person has a claim against the government, that claim may be enforced as a right by proceedings taken against the government for that purpose.*"

Clause (2): "civil proceedings by or against the government shall be instituted by or against the Attorney General and all documents required to be

served on the government for the purpose or in connection with those proceedings shall be served on the Attorney General."

Clause (3): "*subject to Clause (1) of this article, Parliament may by law, make provision for proceedings against the government.*"
And Clause 4: "*in the title of any criminal proceedings, the prosecutions shall be designated by the word, Uganda.*"

THE CHAIRMAN: I put the question on 282, to stand part of the Draft Constitution.

(Question put and agreed to)

MR. MASALU MUSENE: Mr. Chairman, I think there was a typing error, because that should now be 283, having created the new 282.

THE CHAIRMAN: Okay. Those will be synchronised by the technical team.

MR. MASALU MUSENE: Mr. Chairman, the committee considered former Article 283 and found that it was properly formulated and it recommended that it be retained to stand part of the constitution and to read as follows:"*Clause 1: "Any Commission established by this constitution may, subject to the provisions of this constitution, regulate its own procedure or confer powers or impose duties to any officer, or authority of the government for the purpose of discharging its functions."*

Clause (2): "*subject to the provisions of this constitution, any decision of any commission established by this constitution shall require the concurrence of a majority of all its Members and it may act notwithstanding the absence of any Member or any vacancy in the office of a Member.*"

Clause 3: "*In this article, "Commission" includes a council and a committee.*"

DR. BYARUHANGA: Thank you Mr. Chairman. I am just seeking clarification from the Chairman of Committee Four. When in this two, we talk of a majority of all its members, does it mean that supposing we have a commission of nine people and five are the members attending that meeting, unless all the five agree that day, that commission cannot make a decision? And secondly Mr. Chairman, when we include commission and council, are we also indicating that at all times councils and committees must have an absolute majority in order to pass any resolution?

MR. MASALU MUSENE: Mr. Chairman, on the first clarification, I wish to clarify that the commissions set up under this constitution are very important commissions assigned important tasks and therefore it was the recommendation of the Committee that given the importance of the nature of work which this commissions are assigned, it is proper that at least the decisions are taken by the majority of the Members of the commission and as Hon. Byaruhanga states, where there are five out of nine, I think it is important that consensus of all the five is reached before a decision is taken because five out of nine are a majority.

On the second issue as to why commission should include council and a committee and as to whether it means that a council in its deliberation should be taken by majority, I think it is clear that in any council or committee, the law provides for a quorum and a quorum is generally people who are above or who are a majority. I do not see any law or any procedure whereby quorum is below majority. Or maybe if he can ask the question again, maybe I do not get him.

THE CHAIRMAN: I think what he was trying to say is that for instance if you have a quorum of five out of a commission of nine membership, can you make decisions with three being a majority of the five who are present? Or you must at all times have a majority of the nine?

MR. MASALU MUSENE: Mr. Chairman, that is why it is stated in Clause (2) that it shall require the concurrence of the majority of all its members. So where there are five out of nine, it is clear that five are the majority. So when they are only five, they must all concur otherwise no decision will be taken.

THE CHAIRMAN: And I think you explained that the importance of the subject matter which - because these are constitutional requirements.

DR. BYARUHANGA: I thank you Mr. Chairman. I jumped a bit and went to three because they are talking about virtually the same thing. Now if we include the council - for a committee, it may be okay but if - because when you set a quorum for the council, usually to resolve any matter, they will

need the majority of those people present as long as those people present, their number is above the quorum. But now if we tie it to two, it will mean that as he has indicated, even for the council to resolve on any matter will always require acceptance by more than a half of the full membership of that council and therefore, Mr. Chairman, I would wish to convince the chairman to at least drop this council from three.

THE CHAIRMAN: Which Council do you have in mind for instance?

DR.BYARUHANGA: The District Council.

THE CHAIRMAN: Hon. Masalu Musene, what do you say to that?

MR. MASALU MUSENE: Thank you, Mr. Chairman. Mr. Chairman, since the procedure for District Councils has been adequately catered for elsewhere, I think it would do no harm if it is dropped from here, if it is causing some confusion. But what I do not know is whether "council" here would necessarily refer to a District Council alone. I do not know whether that is what Hon. Byaruhanga is thinking of because we could have other councils.

MR. KITARIKO: Mr. Chairman, this article deals with commissions and could not realistically be referring to the council.

THE CHAIRMAN: But I think it is three which is causing a problem. In this article, commission includes the council and a committee. Now have we set up councils other than the districts?

MR. KITARIKO: Suppose you set up a council for research to report on research on various matters?

THE CHAIRMAN: Here they are talking about those which are directly established by the Constitution.

MR. KARUHANGA: Thank you Mr. Chairman. Actually what we meant in our committee when we added (3), it was in reference to councils or committees of the commission established in the Constitution. But there is something lacking at the end which would have sorted out everything. In this article, Commission includes a council and a committee of the commission. That is what we actually meant.

THE CHAIRMAN: Is there a situation where you can set up a council of the commission?

MR. KARUHANGA: Yes, some of the commissions may have councils or designate them as such. So we are just being legalistically careful but we have to add the word of the commission otherwise you are providing too many.

MR. MASALU MUSENE: Mr. Chairman, I think the suggestion by Hon. Karuhanga clarifies the whole matter and a great improvement because if we leave it at council and committee, it can be given a wider interpretation. So we could confine it to a council and a committee of a commission so that it is confined to commissions which have been set up under the Constitution.

THE CHAIRMAN: Agreed? Okay let me put the question on 284 as amended to stand part of the Draft Constitution.

(Question put and agreed to).

MR. MASALU MUSENE: Mr. Chairman, the Committee recommends that clauses (1) and (2) of former Article 284 as contained in the Draft be retained and do stand part of the Draft Constitution to read as follows: Clause (1): "*Any person who is appointed or elected to any office established by this constitution may resign from that office by writing, signed by that person, addressed to the person or authority by whom he or she was appointed or elected except that in case of the Speaker or Deputy Speaker of Parliament, the resignation from that office shall be addressed to the Clerk to Parliament and in case of a Member of Parliament, the resignation shall be addressed to the Speaker.*"

Clause 2: "*The resignation of a person from any office established by this constitution shall take effect in accordance with the terms of which that person was appointed or if there are no such terms when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.*" The Committee recommends that clauses (3) and (4) be slightly amended. Clause (3) was amended to exclude Vice-President and it provides as follows: "*any reference in this article to an office does not include a reference to the office of the President.*"
Clause 4: "*For the purposes of clause (1) of this*

article, office includes the office of; (a) Vice-President, (b) the Speaker and Deputy Speaker of Parliament, (c) the Minister, (d) the Attorney General, (e) Member of Parliament (f) a member of any commission, council or committee established by this constitution and (g) a public officer."

MR. BATEGANYA: Mr. Chairman Sir, I wish to get some clarification. We have mentioned in Clause (3) that any reference in this article to an office does not include reference to the office of the President. May I know why the President should not be allowed to resign? Or if he wants to resign, which article or clause would he use?

MR. KARUHANGA: Mr. Chairman, I just wanted to inform Hon. Bateganya that the resignation of the President cannot be covered in this because here, it requires people writing letters to other offices. The President is covered under the chapter on the Presidency and since he is elected by everybody, the President can make - I do not remember the clause in the article in the chapter - If it is not there, the President is just to make a public announcement to Parliament.

THE CHAIRMAN: There is a provision that he may resign by writing to the Chief Justice. I do not know whether that was retained.

MR. MASALU MUSENE: Mr. Chairman, the Committee recommends that a new clause be added to Article 284 or former Article 284 to provide as follows: "Subject to the provisions of this article, Parliament may make laws providing for the resignation of persons holding offices established by this Constitution not provided for in this article.

THE CHAIRMAN: Okay, let me put the question on 285 - actually former 284, that it stands part of the Draft Constitution.

(Question put and agreed to)

MR. MASALU MUSENE: The Committee recommends that clauses (1), (2) and (3) of former Article 285 as they are, are properly formulated and they should stand part of the constitution to read as follows:

Clause 1: "*Where any person has vacated an office established by this constitution, that person may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this constitution.*"

Clause 2: "*Where a power is conferred by this constitution on any person to make any appointment to any office, he or she may appoint a person to that office even while another person holds the office when that other person is on leave of absence pending the relinquishment of the office.*"

Clause 3: "*Where two or more persons hold the same office by reason of an appointment made by virtue of Clause (2) of this article, then for the purposes of any function conferred on the holder of that office, the person last appointed shall be taken to be the sole holder of that office.*"

THE CHAIRMAN: I do not know how that will arise!

MR. MASALU MUSENE: Mr. Chairman, some people may want to remain despite being relieved of their duties. They may want to remain there by force.

THE CHAIRMAN: Or you mean a person goes into hiding and does not receive the letter of termination? Okay, next.

MR. MASALU MUSENE: The Committee recommends that Clause (4) be amended by the deletion of reference to Vice-President and to read as follows: "*Any reference in this article to an office does not include reference to the office of the President.*"

THE CHAIRMAN: But you say it will be amended by deletion of Vice-President? Okay, that is fine, I have seen it. Yes, go on.

MR. MASALU MUSENE: Mr. Chairman, that is all for former Article 285.

THE CHAIRMAN: Okay, let me put the question on 286 previously 285 that it stands part of the Draft Constitution as recommended.

(Question put and agreed to).

MR. MASALU MUSENE: Former Article 286 now 287 deals with interpretation. The Committee recommends that the definition of Minister be improved upon. The Committee besides that resolved that Article 286 should be refined by the technical committee after all select committees have completed submitting their reports. It was

therefore agreed that the definitions were in order and the articles recommended to stand part of the draft constitution to provide as follows -

THE CHAIRMAN: I do not think they would like you to read through the whole thing.

MR. RWABIITA: Thank you very much Mr. Chairman. That being the case, if we have to take them on a blanket cover, there is somewhere I want to bring to your attention Mr. Chairman.

MR. MASALU MUSENE: Mr. Chairman, maybe we deal with the Minister first because that is the only area where we felt it could be refined.

MR. RWABIITA: But Mr. Chairman, I wanted to put your attention on the words "Speaker of Parliament". But we have got speaker of the District Council so that one also should be improved on.

THE CHAIRMAN: That means it narrows it down and leaves out that of the council to be handled by the Statutes relating to the councils of the districts so that when you refer to speaker when you are reading generally, you are referring to speaker of Parliament. But maybe it could be clarified by the Chairman.

MR. TIBERIO OKENY ATWOMA: Thank you Mr. Chairman. I am only asking on page 11 of the interpretation, below the interpretation of judicial powers. I was wondering whether we should also interpret the meaning of "justice delayed". What does it mean?

THE CHAIRMAN: Could you tell us exactly where you are referring to?

MR. TIBERIO OKENY: I am referring to page 11 - Interpretation of Justice; Judicial Power and then it goes to page 11. I was wondering whether we should also interpret the meaning of justice delayed.

THE CHAIRMAN: No, we interpret for purposes of the terms used in the main body. I do not think we have talked about justice delayed many times. it must have been mentioned once that there shall be no delay in dispensing of justice but you do not go to define it.

PROF. KABWEGYERE: Thank you Mr. Chairman. In light of the fact that the new Article 287 has not been changed at all except for the only word "Minister", would it not be a good idea Mr. Chairman to save the Chairman Committee four from reading every word so that we actually pronounce ourselves on it since there is not much change?

THE CHAIRMAN: Hon. Delegates, this particular article cannot be closed now. For instance, you may find things like Teaching Service Commission have changed. What will happen is that after we have gone through all the things, the technical team will sit down and go through the definitions as they apply in the main body. So I do not know whether we would be doing anything useful to declare ourselves on it right now. Can I suggest that we take that this chapter is done and that subject to revision of that particular article relating to definitions, these we shall look at in the final text when we come to consider whether we are now doing the final text, then you go through these. But for the time being, let us take these as ones available.

Hon. Delegates, I thank you for having agreed to stay behind so that we finish Chapter 18. Now, I would like to adjourn so that we go for Easter but before I do that, Hon. Kawanga says he has an announcement to make.

MR. JOHN KAWANGA: Thank you very much Mr. Chairman. This is just to request the Delegates from Buganda to remain just for five minutes after the Assembly rises. That is all.

THE CHAIRMAN: Hon. Delegates, after we have gone through these very important chapters, I would like to thank you for what you have done. We shall now take a two-week recess during which we shall attend to Easter and also to consult with our constituents and we come back here and resume on Tuesday the 25th. We are allowing Monday for Hon. Atwoma to travel from Kitgum, from Chwa to come back here and then allowing for other arrangements. I suggest that we resume on Tuesday at 2.30 p.m. so that the morning is taken up by Members sorting out a few things having come back from safari. And so, I adjourn until the 25th of this month at 2.30 and meanwhile, I wish you a happy Easter. We stand adjourned. Thank you.

(The Assembly rose and adjourned until Tuesday 25th April, 1995 at 2.30 p.m.)

THE REPUBLIC OF UGANDA

PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

TUESDAY, 25TH APRIL 1995

MOTION:-

Communication from the Chair [Pg 4034]
Consideration of the Draft Constitution of the Republic of Uganda [Pg 4034]

Tuesday, 25th April 1995

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

NATIONAL ANTHEM

PRAYERS

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

(The Assembly was called to Order)

COMMUNICATION FROM THE CHAIR

THE CHAIRMAN: Hon. Delegates, there is no specific communication from the Chair, except to welcome you back from your recess and Easter Break. I take it that you have exhaustively consulted and that we shall now start on our journey towards conclusion of the Constitution making process. As you know, we decided before we went on recess that on coming back from this recess, we shall throw in our Saturdays as well. I am only reminding you, but not seeking a vote on the matter, since we agreed on this issue before we went on recess. So, if you see the agenda coming out for Saturday, do not be surprised. Thank you.

LAYING OF REPORTS ON THE TABLE

THE CHAIRMAN: The Chairman of Committee 2 has just laid on the Table the Committee report on Chapter 10 - the Judiciary.

CONSIDERATION STAGE OF THE DRAFT CONSTITUTION OF THE REPUBLIC OF UGANDA

CHAPTER 10 - THE JUDICIARY

ARTICLE 166 - EXERCISE OF JUDICIAL POWER

THE CHAIRMAN: Hon. delegates, we shall straight away consider the report of Select Committee 2, unless the committee Chairman would like to have a general preface prior to going into Article by Article recommendation. Could the Chairman guide us on this one?

MR. MULENGA: Thank you Mr. Chairman. I do not have much introduction to make on this Chapter, except to highlight areas of major Amendments to the Draft. The Chapter has two components: one is about administration of justice, then the structure of the courts of judicature; including the personnel to man them. In the structure of courts, Committee 2 recommends introduction of two new courts; that is to say, the constitutional court and a Court of Appeal. The first one is a modification of a recommendation by the Odoki Commission, because the commission did provide for decisions on constitutional matters to be made by the High Court, comprising of the Judges. Committee 2, however, is recommending that we establish a constitutional court to be constituted by members of the Supreme court. The second one, is a new introduction to establish a Court of Appeal, between the High Court and the Supreme Court so as to have two stages of appeal starting from the High Court. I will be explaining as we go along the reasons for these proposals. The other apparent departure from Chapter 10 in the Draft, is that we have synchronised all provisions relating to appointment of Judges of all courts to be in the same Article; the same way we have synchronised provisions regarding the tenure of office and qualifications. Mr. Chairman, it is because of that, that you will find several Articles appearing in the Draft of the Commission being omitted. An example is to be found at page 21 of the Draft Constitution, where the committee recommends that Article 168 of the Draft Constitution be deleted, the contents having been transferred to new the Article 164. The committee has recommended the deletion of three other articles; like Article 172 on page 24. Finally, you will find that at the back of the report, the last page, there is an Appendix containing the Judicial Oath. As you recall, we recommended that in Chapter 7 and Chapter 8, where officers in the offices established by the Constitution have to take Oath of Office, it was appropriate that those Oaths be included in the Constitution. This is the Judicial Oath which the Technical Committee has helped us to draft for it to be added to the 3rd Schedule. The others will be introduced in due course when we revisit the chapters. Mr. Chairman, I am now ready to comment on the Chapter Article by Article.

THE CHAIRMAN: I think we take 156 then we move by Clauses.

MR. MULENGA: Mr. Chairman, the committee recommends that in Article 156, Clause 1, be retained in its original form, Clause 2 be amended and Clause 3 be transferred to the Chapter on National Objectives and Directive Principles of State Policy.
Clause 1 reads: Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people.

Clause 2. In adjudicating cases of both civil and criminal nature, the courts shall, subject to the law apply the following principles:-

(a) Justice shall be done to all, irrespective of their social or economic status.

(b) Justice shall not be delayed - *(Interruption)*

THE CHAIRMAN: Hon. Atwoma has a problem with that. Order, order.

MR. TIBERIO ATWOMA: Thank you Mr. Chairman. In (b), where it says justice shall not be delayed, my problem is, delay. What is the definition of delay? And when it is really going to be considered delayed justice? Because in part of the definition, in Article 286, I attempted to insert an interpretation of what should be considered delayed justice, but I was told that the definition was not required in the Constitution, since there was no reference to it in the main Clause. Now, that it appears here, how are we going to determine delayed justice if a definition is not given?

THE CHAIRMAN: Hon. Kawere, do you want to add something?

MR. KAWERE (Mukono County, North): Thank you Mr. Chairman. I would like to inform Hon. Okeny that this is a Draft of a Constitution of the State of Uganda. The Constitution creates the laws, but the details are left for either the Judiciary or Parliament. Thank you Mr. Chairman.

MR. TIBERIO ATWOMA: No, Mr. Chairman, I am not satisfied with that explanation.

THE CHAIRMAN: He was giving you his view of the situation, we do not have to argue between you and him.

MR. OMARA ATUBO (Otuke County): Thank you Mr. Chairman, to assist Hon. Tiberio Okeny, one has to go back to the Chapter on Fundamental Human Rights and Freedoms; and there you will be able to find out areas such as; a person is entitled to a fair and speedy trial, where a person is arrested what happens, how soon should he be brought before court and if he is brought before court, how long should he be remanded. I think we have given the limitation period as six months. This is an umbrella statement and in this case justice shall not be delayed, may not be specifically defined within that provision, but as Hon. Kawere has said, we have to look at the broader provisions of the law either within the Constitution as in Chapter 5, or laws which Parliament shall make later. What will happen to various trials which are going to be made by court? Thank you Mr. Chairman.

THE CHAIRMAN: Thank you. I think that is a very good explanation.

MR. DICK NYAI (AYIVU COUNTY): Thank you Mr. Chairman. On Clause 2 (a), unless the committee can justify otherwise, I believe the formulation could be improved if we said justice shall be seen to be done to all. I think it is important that it must be transparent and not something somebody does to you as a favour. Thank you Mr. Chairman.

THE CHAIRMAN: Okay, could the Chairman comment on that?

MR. MULENGA: Thank you Mr. Chairman. I think Hon. Dick Nyai is missing the point. What is important is that, justice is done. If he wants to add 'and be seen to be done', that would be secondary; definitely it cannot be the substantive provision of the Constitution and I will discourage adding the phrase, that 'it must be seen to be done' because I think what really matters is that, justice be done.

MR. BAGEYA: (KIGULU NORTH): Thank you Mr. Chairman.Before I can consider Hon. Dick Nyai's Amendment, I wonder who is there to over see, because to be seen, suggests somebody would be above the laws, as an overseer. I seek clarification as to whether there will be any such person?

THE CHAIRMAN: No, that is a misunderstanding. I think Ringwegi can explain.

MR. RINGWEGI (PADYERE COUNTY): Thank you Mr. Chairman. I want to resound what the Chairman of the Committee said about the provision of Clause (A) of Sub-clause 2 of Article 156, that when we are making a provision, empowering the courts or an institution to do something, we just give that empowerment and by saying that justice shall be done, we are saying that the institution we are creating will do justice. Now to slot in an addition by Hon. Dick Nyai that it must be seen to be done, is not a duty, but a test. What we are saying is that you have to measure the action of the institution you have empowered to administer justice by this yard stick, and that one we cannot put in a Constitution. I think it is sufficient as the committee has provided. To include Nyai's phrase will be an anormally. Thank you Mr. Chairman.

THE CHAIRMAN: Thank you. I think we have heard enough airing of (a) and (b). Could the Chairman of the Committee, unless you think he must comment, go on to the next paragraph.

MR. MULENGA: I have got to find help to remind the Hon. delegates of the opening of this Clause. It says, in adjudicating cases of both civil and criminal nature, the courts shall subject to the law apply the following principles. So, these are really principles being laid down and so people like Hon. Bageya should not be asking who will be supervising. Principle (c) is adequate compensation shall be awarded to the victims of wrongs, *(Interruption)*

MR. KAJARA ASTON: Thank you Mr. Chairman. Mr. Chairman, before we leave 2 (a), I seek clarification. The Article says that we are to pay respect to social and economic status and when you mention those two, that means that there are other considerations which should not be taken into account. *(interruption)*

THE CHAIRMAN: I do not think that you are reading it properly. It is not saying you should pay respect to, it states, irrespective of. So, you do not regard them. I think we are just wasting time on that one.

MR. MULENGA: (d) reconsideration between parties shall be promoted and (e) Substantive justice shall be administered without undue regard to technicalities. Mr. Chairman, I beg to move.

THE CHAIRMAN: That is at the end of two - those are two Clauses now in 156.

MR. MULENGA: That is right Mr. Chairman.

THE CHAIRMAN: Okay. Hon. Wanendeya, what is the problem?

MR. WANENDEYA: Thank you Mr. Chairman. This is in connection with the technicalities. If somebody is taken to court after working hours and the magistrate or Judge has left the chambers, is it possible for Justice to be administered by looking for this Magistrate or Judge ? The point over here, Mr. Chairman, is the case of Lawrence Kiwanuka, who was taken to court after 5.00 p.m. when the Police should have known that the Magistrate usually leaves the court at 5.00 p.m.

THE CHAIRMAN: How does that example support or derogate from (e)?

MR. WANENDEYA: The technicality, Mr. Chairman, is that cases should be dispensed of as quickly as possible without some of these technicalities, in the sense that, if the Magistrate has left, the lawyers should look for him/her so that in case bail is to be granted, then that should be the point to be considered.

THE CHAIRMAN: Okay, I think that is a point for noting. Now, let me put the question on 156 as recommended by Select Committee 2. I put the question that Article 156 does stand part of the Draft Constitution.

(Question put and agreed to).

ARTICLE 157.

MR. MULENGA: Mr. Chairman, the committee recommended that in Article 157 Clause 1, be deleted and Clause 2 be retained without Amendment; so that the Article reads as follows:- Parliament shall make law providing participation of the people in the administration of justice by the court. What has been deleted is the Clause which reads as follows: -

The people shall participate in administration of justice and in particular through the system of trial by jury and the assessors. Mr. Chairman, the view of the committee was that it should be Parliament, after due consideration, to determine in what way and in what mode the people can participate. At one time it may decide on the jury, another time, it may decide on assessors or for different cases, it may decide on jury or assessors. Right now, looking at the present position, we have had on our statute Books and in practice, a system of using assessors which is continuing. The only provision I believe we ever had which has never been put in practice for use of a jury was, in cases in Karamoja. I have not quite understood why in colonial times they thought the jury system would be suitable in Karamoja, but it has never been put in practice to my knowledge and we thought that rather than including in the Constitution a provision for trial by jury when other systems which have tried it for a long time are abandoning it would be inappropriate. We thought it would really be left to Parliament if at any time it is felt that there is need for trial by jury, it could be introduced by Parliament.

THE CHAIRMAN : That is the only Clause on 157.

MR. MULENGA: That is right.

THE CHAIRMAN: So, can I put the question on 157 as recommended to us by Committee 2, that Article 157 do stand part of the Draft Constitution.

(Question put and agreed to)

CLAUSE 158.

MR. MULENGA: The Select Committee recommends that in Article 158, Clauses 1,2,5, and 6, be retained without Amendment and Clause 3, 4, 7 and 8 be amended as indicated below.

Clause 1, reads: *in the exercise of judicial power, the court shall be independent and not be subject to the control or direction of any person or authority.*

THE CHAIRMAN: Read the next.

MR. MULENGA: 2: *No person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions.*

3: *All organs and agencies of the State shall accord to the courts such assistance as the court may require to assure the effectiveness of the court.*

4. *A person exercising judicial power shall not be liable to any action or sued for any act or omission by that person in the exercise of judicial power.*

5.*The Administrative expenses of the judiciary including all salaries, allowances, gratuities and pensions payable to or in respect of the persons serving in the Judiciary shall be charged on the Consolidated fund.*

6. The judiciary shall be self accounting and may deal directly with the Ministry responsible for finance in relation to its finances.

7. The salary, allowances, privileges and retirement benefits and other conditions of service of the Chief Justice, Principal Judge, Justice of the Supreme Court, the Justice of Appeal or a Judge of the High Court or any other judicial officer or other person exercising judicial power cannot be varied to his or her dis advantage.

8. The office of the Chief Justice, Deputy Chief Justice, Principal Judge, the Justice of the Supreme Court, Justice of Appeal and Judge of the High Court shall not be abolished when there is a substantive holder of that office

THE CHAIRMAN: Okay, do you want to give any rationale here? I can see the House is satisfied, except Hon. Ruzindana.

MR. RUZINDANA: Mr. Chairman, I seek clarification on No. 5. which says that the administrative expenses of the judiciary, that means the recurrent expenditure of the judiciary including

all salaries, allowances, gratuities and so on of Grade II Magistrates, Grade III Magistrates, up to the Chief Justice, shall be charged on the Consolidated fund. Is that the understanding of the committee Chairman? Because this means the recurrent expenditure of judiciary will be charged on the consolidated fund. Is it really necessary to charge all the recurrent expenditure of the judiciary on the consolidated fund? Why not limit it to certain Judicial officers, rather than whole sale it to the whole Judiciary and to all manner of expenditure of the judiciary? Thank you Mr. Chairman.

THE CHAIRMAN: I think the Chairman will answer, but of course, you also should understand that there is no point paying salaries which are protected and then you do not have money to do the job. But the Chairman of the committee, please.

MR. MULENGA: Mr. Chairman, it is my understanding that the current expenditure of the entire judiciary would under this clause be charged on the consolidated fund. It is also my understanding that this is not an innovation but has been the case all the time. That the judiciary expenditure is charged on the consolidated fund is to further enhance on the principal ofjudicial independence.

MR. OBUA OTOA (ERUTE COUNTY NORTH): Thank you Mr. Chairman. Mr. Chairman, I am seeking clarification on 4, which says: a person exercising judicial power shall not be liable to any action or sued of any act or omission by that person in the exercise of judicial power. This to me, Mr. Chairman, gives total immunity under all circumstances to the person we are talking about. Is it the intention that whoever is exercising judicial power is to be given total immunity or even impunity to do things which might be infact wrong?

THE CHAIRMAN: Let us get the comment from the Floor.

MR. KASANGAKI (BURULI COUNTY): Thank you Mr. Chairman. I want clarification in respect of No. 6. in case of the decentralised districts, how will the judiciary be self accounting?

PROF. NABUDERE (BUDADIRI WEST): Thank you Mr. Chairman. I am responding to the question raised by Hon. Obua Otoa. This part only protects those Judges who are acting in accordance with their terms of duties. It does not protect a Judge, for instance, who takes a bribe in course of discharging his duties; because in such an event, the police has power to question him about any corrupt practices or any other offence. The Constitution assumes that the judge is carrying out duties judicially.

MRS. LAGADA AMONGI (WOMEN - APAC) : Mr. Chairman, I am seeking clarification on No. 7 from the Chairman of the Committee, whether the Chief Justice, the Deputy Chief Justice, Principal Judge, the Justice of Appeal, do not fall under the title of Judicial officers, because if they do, I would propose that No. 7, should read: The salaries, allowances, privileges and retirement benefits of judicial officers or other persons exercising judicial power shall not be varied to his or her advantage, that is if those people fall under the title of judicial officers, because as it is, I do not see why they are singled out and then we go ahead to refer to other judicial officers.

PROF. KABWEGYERE (IGARA WEST COUNTY): Thank you Mr. Chairman. I am still on 4, I am equally apprehensive as Hon. James Obua Otoa about this blanket coverage of the judicial officer, because Mr. Chairman, when one reads it, as follows; a person exercising judicial power, shall not be liable to any action. To me, it means that this person because of his office, cannot be retired in public interest. Even if he has performed so poorly, we will stand him until he retires as of age; because I know when you want to carry out judicial enquiry, that is again a whole procedure. But if this person is to be so immune that what he does is supposed to be sacrosanct, and only handled perhaps by the a higher court, then we could have a person who hangs every person he tries and that will not be justice at all. Secondly, - *(Interruption)*

THE CHAIRMAN: I think Hon. Kabwegyere, you are arguing from a wrong premise. You have first of all misinterpreted the word 'action'. The meaning of the word 'action' here, I do not think, is what you have in mind is more technical than that! -*(Laughter)*

PROF. KABWEGYERE: Mr. Chairman, could I be enlightened further?

THE CHAIRMAN: The Hon. Kirenga can give you the explanation.

PROF. KABWEGYERE: Okay thank you. I am ready to learn.

MR. KIRENGA (Mityana North) Thank you very much Mr. Chairman. *'Action'* is actually a suit, it means a civil case. So, what it means is that if a Judge makes a decision, for instance, he can make a decision which is wrong, but before it is upset by court of Appeal, it is standing; but supposing because of his actions he is to suffer, because if it is upset by the Court of Appeal he suffers, here we are saying that he should not be liable, because if we are able to sue a Judge, then, the Judge will not be able to exercise his functions without fear. He will fear to make any decision, because whatever action, whatever decision he would make, he would personally be liable. For instance, supposing he says, okay, I judge against you, because you did this and then, on appeal you find that you are right, now the Judge suffers, you sue him for making that decision against you. That would interfere with the independence of the judiciary. That is why we are saying, whatever a Judge does in the judiciary - we do not mean if he is acting outside the course of his duties - but if he is making a judgement, his actions are sacrosanct until they are upset by a higher court. But before they are upset by a higher court, they are standing and he is not personally liable for any action he has done, even if it is a wrong judgement. That is what we mean, Mr. Chairman.

THE CHAIRMAN: So, it is really more technical, it is saying that, he does not lift the situation where in his suitability to remain a Judge can be investigated in accordance with other provisions of the Constitution. But you do not take him to court for having arrived at a wrong conclusion by mis directing himself either on facts or on the law. Hon. Mulenga, I think there are some issues which were raised which you could answer.

MR. MULENGA: I think Hon. Obua Otoa and Hon. Kabwegyere have been satisfactorily answered. The other one was by Hon. Lagada which is valid, but can be taken care of by the Technical Committee. We should have at the end of the report on advice of the Technical Committee, we put a definition of judicial officer. I think she has got a point that we could make brief, Clause 7, by reference to judicial officer, but I would rather we refer that to the Technical Committee.

THE CHAIRMAN: Can I put the question on 158 to stand part of the Draft Constitution.

(Question put and agreed to).

Article 159.

MR. MULENGA: Mr. Chairman, the Committee recommends that in Article 159, in Clause 1, a new paragraph be inserted and Clause 2 be retained without amendment so that the Article reads:

CLAUSE 1: The judicial power of Uganda shall be exercised by the court of judicature which shall consist of:-

(a) The Supreme Court of Uganda,
(b) The Court of Appeal of Uganda,
(c) The High Court of Uganda and;
(d) Such subordinate courts as Parliament may by law establish.

MR. NSAMBU NSUBUGA (MAKINDYE DIVISION WEST): Thank you Mr. Chairman. Your honour, - *(Interruption)*

THE CHAIRMAN: I have not yet gone to the Bench.

MR. NSAMBU: Mr. Chairman, I would like to insert a word 'Khadi's court' on (d).

THE CHAIRMAN: How will you frame it?

MR. NSAMBU: I will say, " and Khadi's Court and such subordinate courts as Parliament will by law establish." The reason - *(Interruption)*

THE CHAIRMAN: That is, we are allowing Hon. Nsambu to give his explanation; so that members can understand before we take it as an Amendment, otherwise in our Rules, we would have found a problem for lack of secondment.

MR. NSAMBU: Well, I think I have some people to second me.

THE CHAIRMAN: He has been seconded by Hon. Wagwa Lubega and Hon. Migade. What the hon. member is saying, is that he would like to amend(d) by adding there that "Khadi's courts and such other subordinate courts as Parliament ...." Now that the Motion has been seconded, let Hon. Nsambu explain what he means by Khadi's Courts.

MR. NSAMBU: Mr. Chairman, Khadi's Court is an Islamic court which we think will be exercising private law of marriage and divorce and inheritance of property. We have in the past been going to present - Secular courts, but we have not found remedies because they do not understand the law as it is applied in the Islamic society. I am aware that whenever you speak of the Sharia or Islamic law, people think of the criminal part of it, whereby you cut off hands, legs, and so forth. But this one, is already established in Kenya, and it is established in Tanzania, and the court is working quite well to settle the differences among Moslems; in respect of those three items marriage, divorce, and inheritance. When we take, especially the law of inheritance, we find a lot of difficulty in making the Judges or Magistrates accept the interpretation of the Islamic law after say the Uganda Moslem Supreme Council has already made decisions on certain rules or on these disputes of the property and we think that if we had a court which knows all about Islamic law, things would have been okay. You may say that since the Parliament has been empowered to create such other subordinate courts, we should leave it to Parliament. But I have been a Legal Adviser to the Uganda Supreme Council for the last 22 years, we have made attempts to get this Court established by Parliament and failed - *(interruption)*

THE CHAIRMAN: Order, order.

MR. NSAMBU: And failed to get one. It appears people do not consider this issue serious. So, when we get this chance, Mr. Chairman, I feel this House should accept to see that this Court is included in the Constitution so that it compels the executive one in order to cater for the moslems, because we have already in Article 64 provided for respect of culture, may be you allow me to read it.

Every person shall have the right to enjoy, practice, profess, maintain, promote any culture, language, tradition or creed or religion, subject to the provisions of this Constitution and it is the Constitution that the rights protected by this provision do not impinge upon the rights and freedoms of others or the national interest".

Mr. Chairman, in my practice, I have faced very difficult situations where by, you find a man having married and stayed with his wife for 60 years, closes the door on her at such a time when she is almost a rake, without even making provision. When you go to the Secular Court, they will tell you that theirs is not an Islamic Court; they will instead refer you to the Uganda Supreme Council which has no legal powers to enforce their decision. This, therefore is a timely moment to have this community catered for. We also have a problem with pertanity, such cases could be easily considered where there are disputes, because they are provided for in the Islamic Sharia. I request and I pray, the Hon. Members of this august Assembly not to fear that we are introducing criminal law. In this case, we are dealing with private Islamic Sharia Law which we think will be of great help to the society which makes nearly one fifth of the population of Uganda. Thank you very much. I beg to move.

MR. BATEGANYA: (BUKOOLI CENTRAL): Thank you very much, Mr. Chairman. I wish to oppose the inclusion that Hon. Nsambu is seeking on the following grounds:

(i)In Article 6, we resolved that the Government of Uganda shall not adopt any religion as a state religion.

ii) In the Article we have just passed, 156, we have said that, justice shall be done to all, irrespective of their social or economic status.

So, this particular detail he is seeking to include here is covered in the social aspect of what we have provided in Article 156. On those grounds, I wish to oppose him. Thank you very much.

MRS. JANAT MUKWAYA (MUKONO COUNTY SOUTH): Thank you Mr. Chairman. As a Magistrate, who worked in a rural area, adjudicating over a population which was dominated by Moslems, I faced the same problem

which Hon. Nsambu is talking about. I remember seeing the house moved in general debate when I talked about the Sharia law and its advantages especially on marriage and divorce. I am,therefore, appealing to members of the CA to protect,especially, the moslem women in this Constitution, even if the moslem community is a minority group. I beseech all men who support women, to come forth and support the moslem women by creating a provisal in this Constitution. Thank you Mr. Chairman.

MR. KIRENGA: Mr. Chairman, I oppose this Amendment. I remember that the same attempt was made to introduce this issue in committee 2, but is was not pursued. This would have been the appropriate place, because we would have done some research and assisted the House, but now it is being introduced without having been discussed in the committee because it was abandoned.

Secondly, this issue is actually very complicated. It would require Parliament, maybe to setup a Committee to see how the whole thing can work, but just introducing it here, when we do not even know what it is all about, could create some problems. We do not have sufficient material on this issue.

Mr. Chairman, I would also discourage the idea of introducing religious courts, because after all they are also ecclesatical courts and I do not know whether we should also introduce them here. We should try to discourage this kind of thing, and instead leave it to Parliament which will have more time to study it and see the pros and cons, rather than rushing into something which we do not know much about.

MR. OKANYA (Butebo County): Thank you Mr. Chairman. I oppose the Motion, because if we are going to set rules or to make laws, that will deal with a specific society, we shall be creating a kind of polarised society; we are not going to have Moslems, for example, being handled by only the Islamic laws which this Constitution may approve. The laws we are making are laws that should serve everybody equally. We might be faced with another group of people, saying, let us introduce Catholic or Canon laws. If we avoided bringing in religious oriented arguments, in this case, we shall be saving this country great catastrophes in future. It is also likely that if we allowed part of these laws to be enacted or to be practiced by a Moslem or a special group in this country, these groups could eventually ask for more. History has shown us that, things of this nature happen and there is no way we can avoid these. We are hearing of fundamentalism creeping into this continent and engulfing various nations. We would do better by avoiding this kind of thing and I appeal to the delegates in this House to ensure, that the laws we are making in this House are good and fair for everybody. I request that we put this question to vote. Thank you very much, Mr. Chairman.

THE CHAIRMAN: No. Let me hear Hon. Migade. He seconded the Motion.

MR. MIGADDE LUBULWA (KATIKAMU SOUTH): Mr. Chairman, I support the Motion, because the amendment is not going to affect any other people, other than the Moslems. In the Islamic religion,

Mr. Chairman, there are laws which govern marriage and inheritance and I want to inform this House, that many moslems when they are making their Wills, they write, my property would be shared according to the Islamic Sharia. But, because in this country this is not recognised, there is always a problem especially at the time of sharing out properties. Mr. Chairman, even if we say that we do not want to make laws for a certain sector, but if Islam is to remain, these laws will remain, because these laws exist in the *KORAN*. What we are seeking, is this House to allow the Moslems to exercise their religion with the allowance of the law. I think the Mover has made it very clear that, we are not talking about criminal law, which prescribes cutting off somebody's hand if he was caught stealing; but the Islamic law, for example, allows very well that if somebody could marry one or two wives, it is normal within the Islamic law, that is all we are trying to say. The same law stipulates that property must be shared equally amongst the children and this is what we want catered for.

I request this House to bear with the Moslems in this country by allowing a provision to permit them practice their religion as it is in their Holy Book. Thank you Mr. Chairman.

THE CHAIRMAN: Can I hear another person in support of the Motion?

MR. LUBEGA WAGWA (BUTAMBALA COUNTY): Mr. Chairman, I also support the Amendment moved by Hon. Nsubuga Nsambu on the ground, that when you visit the Administrator General, there are cases which have not been answered in connection with inheritance of property of the deceased; simply because in the will, they say, the children will share that according to our law - the Sharia Law, and they do not know what the Sharia Law means. We feel that if the house allows this provision, it is going to be very easy for the Administrator General to get rid of those cases which are not answered. Mr. Chairman, another reason is about marriage. I can see that most of the people here, members of this Assembly - *(Interruption)*

THE CHAIRMAN: Order, order.

MR. WAGWA LUBEGA: Have been attending our marriages in Mosques and we follow the Sharia Law, the Islamic law. What is the use of you people coming to our Mosque when you do not know how we celebrate our marriages? It is better if we included this in the Constitution, that way we will be able to know exactly what is taking place.

THE CHAIRMAN: Order, order. Please go on.

MR. WAGWA LUBEGA: Mr. Chairman, I appeal to members of this Assembly to support this Amendment. I have seen moslems marrying four wives according to Sharia Law; but when it comes to divorce, they do not know how they are divorced and women do not know either. If you put this provision, then we shall be able to evoke the law connected with divorce, according to our Islamic law. I appeal to Members of this House to support this amendment, without reservations since it affects only Moslems.

THE CHAIRMAN : Hon. Zziwa Margaret.

MRS. ZZIWA (Kampala District): Thank you very much Mr. Chairman. I object the inclusion of this particular amendment in the constitution. I support the issues concerning the disadvantage of women especially those in the Sharia Law but I realise that immediately we include this law in this constitution, it will cause a bias. It may even raise the possibility of one saying that since the constitution favours say, mostly women, I can run from one religion to the other. I suggest that we leave it for the Legislature to decide on the Sharia laws, other than including it in the Constitution. Many would consider such a provisal sectarian.

THE CHAIRMAN: Hon. Abbey Mukwaya.

MR. MUKWAYA A (Busiro East): Thank you very much Mr. Chairman. I support this amendment, for the sake of Moslem women who have been disadvantaged for long, simply because they have no special courts where they take cases of marriages and divorce and inheritance and as a result the religion is also being abused. For instance, in the Koran, a man is not allowed to marry more than one woman or wife unless he is able to support her and even support the extra wife in marriage. So, the *-(Interjections)-* Mr. Chairman, can I be protected from Hon. Kategaya?

THE CHAIRMAN: Yes, you are protected. Go ahead.

MR. MUKWAYA: There is a chapter in the Koran *(Sulatin Nisa)* which talks about the family. It says that men are free to marry one wife or two or three according to their wisdom; according to the ability of the husband to support the wives. The element of love may be there but it is part of the ability to manage more than one wife. So, Mr. Chairman, this is not a laughing matter. It is really important that we appreciate that unless we create a substantive court and the women are aware that once there are injustices in their marriages, they have a well established court where they can take their cases, then even this provision in the Koran which allows men to marry more than one wife will be abused the more. It is, indeed, in the favour of women that this kind of court should be established by the constitution. I do not see any harm in establishing this court, because it is provided in the Koran that these practices are there but we are also trying to fight the disadvantages in the families, which sometimes lead to breakages in families, to the disadvantage of Children in muslim families. Mr. Chairman, I support this amendment and appeal to Hon. Members of goodwill to support this noble amendment. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Loote.

MR. OGWAL LOOTE (Moroto Municipality): Thank you Mr. Chairman. I oppose the amendment,because it seeks to create a special group in this country. Proponents of this amendment are highlighting the plight of women, then in this case let us debate women. Introducing Sharia Law, is marginalising the women. What about the Christian women, where will you put them? There are also women who do not belong to any religious sect in this country! Where does such a law leave these women? Some delegates like Hon. Janet Mukwaya have called upon us to support women, yes we do, if the amendment deals with women in general, but not a sect of women like you would like to bring a doctrine of Islamic here in the constitution. I would like also to warn Hon. Delegates that once we constitutionalise a doctrine of a sect, like say the Sharia, it will be misunderstood that we have constitutionalised the Sharia Law and we shall be put to task to explain this to people in our electoral areas. I oppose the amendment because it seeks to constitutionalise Sharia which is a law of a particular sect. Thank you Mr. Chairman.

MRS. KAWOOYA (Women - Masaka): Thank you Mr. Chairman. Mr. Chairman, I support this amendment, not because I am moslem, but because of the facts that have been clearly elaborated by the Mover. The learned friend has told us Mr. Chairman that for 20 years he has been working; he has been in his experience handling cases for this disadvantaged group. Upto today he is being faced with the same problems. Mr. Chairman, in our community we have this problem. Every Hon. Member here knows that the moslem women are disadvantaged, they are suffering, and marginalised by the law. *(Interjections)* Mr. Chairman, please protect me.

THE CHAIRMAN: Hon. Karugaba please!

MRS. KAWOOYA: Mr. Chairman, I disagree with Mr. Loote who has said that in moving this amendment we are trying to create a special group . This group of the muslim women is already there. So, we are not creating it. We are just creating a provision which has to protect the minority and in moving this Mr. Chairman, the Mover has already said we are not creating criminal laws. We are creating laws which parliament may one day have to follow. He asked about what would befall the Christian women; When you find out about the laws governing marriage, divorce, at least this group seems to be catered for. But with the muslim community, once you are there, even if you go to FIDA, they will refer you back to Uganda Muslim Supreme Council. To Whom, again, these laws are not clear. Our laws as the muslim community are embodied in the Koran. You find in the Koran it is written in English, in Luganda and in Arabic and you find most of these women cannot clearly define these laws. Mr. Chairman, I beg the House, that we debate this issue. We are not creating a separate sect for the muslim women. We know that parliament can take in the laws, but then we are asking for a guideline whereby at least it can be referred to, for us to know that we are protected according to the law. For a long time we have been left behind. Even the learned members find a problem when we are interpreting our laws plus the laws which are made by parliament. I beg members to look back to the moslem women in their constituencies suffering because of these unclear laws. Mr. Chairman, I support the amendment. I thank you Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, let us decide on this one. I think we have had a general debate of some kind. The Motion is by Hon. Nsambu that Paragraph (d) of Clause I of Article 159, be amended by inserting the words *Khadis' Courts* before the words *and such sub-ordinate courts as parliament may by law establish.* In other words say, the Parliament should establish Khadi's Courts and in addition other sub-ordinate courts. So, I will put the question. Will those in favour of Hon. Nsambu's Motion say aye, to the contrary, no.

(Question put and negatived)

THE CHAIRMAN: Yes, we are going to the next one. Did you want to amend something there? Hon. Tinyefunza.

MAJ. GEN. TINYEFUZA (NRA Delegate): Thank you Mr. Chairman. I seek clarification in regard to (1) - The substantive 159 (1) and then the subsequent (d) because I think a,b,c,d can almost be construed within the meaning of (1).

Therefore, Judicial Power shall be exercised by the courts of Judicature. Mr. Chairman, I think that there are some courts which are not courts of judicature. For instance, I think Military Tribunals are not courts of Judicature. I even think an appellant court, the Court of Appeal of Uganda, is not a court of judicature really in the meaning of the law. So, I would like some clarification from the chairman of the committee. How do we resolve this? Because if you say judicial power shall be exercised by the courts of judicature and then give the categories **a,b,,c,** and even (d) - Parliament shall be confined to such other courts that must be courts of judicature. How do we solve that Mr. Chairman?

THE CHAIRMAN: Hon. Mulenga.

MR. MULENGA (DP Delegate): Mr. Chairman, I disagree with Hon. Tinyefunza's understanding of courts of judicature. Courts of Judicature may even be a repetition. It is courts that apply law. Now, we are not providing for military tribunals that will not apply law. So, any court created by parliament shall be, by this definition, a court of judicature. So, unless he elaborates a little on what he understands by court of judicature, I will not be able to answer him adequately.

MAJ. GEN. TINYEFUZA: Mr. Chairman, I thought that Courts of Judicature are such courts with original jurisdiction. I do not know whether Hon. Mulenga would agree with me there and let us take for instance, an appeal court normally would not be a court of judicature in that sense. So, unless you tell me that this is not correct and of course, there are also appeal courts; for instance, appeal tribunals which would be there. So, if I get your assurance that these are courts of judicature within the meaning of 159, I have no quarrel but my understanding was different, I thought they are not.

MR. MULENGA: Mr. Chairman, I definitely disagree with Hon. Tinyefunza's understanding of courts of judicature because he is restricting it. By Courts with original jurisdiction, we would only have the High Court, Magistrates' Court but that is very restrictive - and I do not think it is supported by any definition of what is courts of judicature. I think the way it is Mr. Chairman, there is nothing wrong with it. All the other courts sub-ordinate to the High Court are also included if created by parliament.

THE CHAIRMAN: Hon. Karuhanga are you commenting on that?

MR. KARUHANGA (Nyabushozi County): Yes, Mr. Chairman, I consulted my friends who are conversant with Latin and I am advised that the word *judicature* comes from the word Judicare which means to judge to - judge the living and the dead. Such that when they say the judicial powers of Uganda shall be exercised by the courts of judgement which shall consist of, does not therefore, include the meaning as read by Hon. Maj. Gen. Tinyefunza. I think the explanation given by the chairman, Hon. Mulenga is the correct one following on the definitions that I have got from Latin.

THE CHAIRMAN: Hon. Aggrey Awori.

MR. AWORI (Samia Bugwe North): I seek clarification from the Hon. Chairman of the committee on ICJ. What are the decisions or rulings of ICJ, how do they fit in our judicature?

THE CHAIRMAN: Hon Mulenga.

MR. MULENGA: Mr. Chairman, I am reminded that Hon. Awori has been in the diplomatic service. He probably would advise us whether we are signatory or party to the convention that creates ICJ - That is International Court of Justice; and if we are, then if we should ever submit to the jurisdiction of that court in any case, or we would be bound by a decision taken in such a case but ICJ is not a court of judicature in Uganda and as I said, jurisdiction is subject to a party saying yes, we agree to go there for that case. So, if there is any case where Uganda is sued and we agree to go to the ICJ, or if we want to sue another country and we wanted to go to the ICJ, the decisions of that court will bind according to our voluntary accepting the jurisdiction. Mr. Chairman, I have answered the query but it definitely does not arise out of this article.

MR. AWORI: Mr. Chairman, the Hon. Chairman says he is asking for my opinion as a previous diplomat. Mr. Chairman, I recall at one time as an ambassador representing this nation, I was asked by the government to support nomi-

nation of a Ugandan to be a member of this Distinguished court of justice. Mr. Chairman, I also recall at one time some nation which had done havoc to us sought compensation from other sources but failed and then we were referred to ICJ for arbitration. So, I wonder, in the event that this nation pursues that matter again to seek compensation from Uganda, what would be the opinion.

THE CHAIRMAN: Yes, but I think he is saying that that arises from a different article of this constitution rather than this one. There is one relating to our belonging to International Organisations and submitting to them.

MR. AWORI: Which we do in this case.

THE CHAIRMAN: In this case, it is not part of this. He is saying it would arise from say, the area dealing with our international arrangements with other nations belonging to such bodies and then, we have to submit if we so wish, having of course, complied with the requirements as to ratification and other things within. But that would, therefore, fall under our foreign affairs power rather than under the judicial power of Uganda internally. I think that is the difference.

THE CHAIRMAN: Yes, Hon. Mayanja Abu.

MR. MAYANJA A (Busujju County): Mr. Chairman, I have been taken unawares but there seems not to appear any reference to courts martial. They are not sub-ordinate courts.

MR. MULENGA: Mr. Chairman, they are sub-ordinate courts. They are sub-ordinately High Courts definitely.

THE CHAIRMAN: But I think when we were dealing with defence we made reference to Courts Martial. Did we?

MR. MULENGA: No but Mr. Chairman, they are established by Statute and therefore, come under paragraph (d).

THE CHAIRMAN: Hon. Abu Mayanja.

MR.MAYANJA: Mr. Chairman, if they are going to have powers to administer the death penalty - things of that kind; I think they should be mentioned in the constitution.

MR. MULENGA: Mr. Chairman, what is mentioned in the constitution does not depend on what sentence may be carried out. At one time I think magistrates were given very large powers, but were still sub-ordinate to the High Court.

THE CHAIRMAN: I think there are some countries like Kenya where Chief Magistrates have got power to impose death sentences for robberies and such things; aggravated robberies I mean. I think it is the same here. So, I suggest we leave it as it is. Hon. Mulenga Clause 2.

MR. MULENGA: Clause 2 - Subject to the provisions of this constitution, Parliament may make provision for the jurisdiction and procedure of the courts.

THE CHAIRMAN: Hon. Elly Karuhanga.

MR. KARUHANGA (Nyabushozi County): Mr. Chairman, I want clarification from Hon. Mulenga or any Member of the committee; on what the real meaning of (2) in terms of jurisdiction is - read carefully, *subject to the provisions of this constitution, parliament may make provisions for the jurisdiction and procedure of the courts.* Now, on Clause scrutiny, it seems that parliament can change jurisdiction if it wishes,in the middle of a case. Yes, and it can shift jurisdiction

THE CHAIRMAN: You mean if they think that some - *(Interruption)*

MR. KARUHANGA: We empower it to do so. I wonder whether there could be any wording which would stop that from happening.

THE CHAIRMAN: But did you not say subject to the provisions of this constitution but I leave it to Hon. Mulenga.

MR MULENGA: Mr. Chairman, subject to provisions of this constitution is inserted because the constitution gives jurisdiction in some areas. For example, you will find that there is definition of the High Court jurisdiction. Now, it says Parliament may make provision for the jurisdiction and procedure of the courts. My understanding of this is that - Parliament is empowered to determine the jurisdiction of any court by Statute as long as it does not vary from what is laid down in the constitution. And that

means that statute may be passed to say and they have been passed before - to say, for example, that the Chief Magistrate's court had power to try rape cases. Whatever the punishment. Then, in another year, it may turn around and say the Chief Magistrate has no power to try cases that carry death penalty. By reason of that, the rape case would move to the High Court because the Chief Magistrate would not have power to impose the death penalty which it carries today regretfully. So, Mr. Chairman, I do not envisage a situation where parliament in the middle of a case, in order to prevent a case being proceeded with, maybe that is what Hon. Karuhanga had in mind, would just pass a law to prevent the case going on.

THE CHAIRMAN: But it would be very interesting to find a Statute being drafted providing for the trial of Elly Karuhanga so that it says The trial of Elly Karuhanga's case is hereby transferred but I thought what normally happens is - even if parliament in the middle of a particular case, were to remove jurisdiction from that particular court for instance, A Chief Magistrate Court to a High Court Judge. There would normally be what they call savings and transitional provision so that the particular matters which are in the pipeline are expected from the application of the new situation. This is normal - I mean it would be a very ridiculous parliament that would not provide for that sort of situation. They would provide for savings and transitional provisions so that any matters pending before a court shall be disposed of by that court as if it has jurisdiction given under the new situation or in accordance with procedures applicable to the case before and then any new matter would then, from that apply in the new courts. That is how I would understand this provision to apply. Agreed. Let me put the question on 159 as recommended that Article 159 do stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Next. 160. Hon. Mulenga.

MR. MULENGA: Mr. Chairman, Committee 2 recommends that in Article 160, Paragraph (b) be deleted and Paragraph (c) renumbered as (b). The article should read as follows: *'The Supreme Court shall consist of (a) The Chief Justice, (b) Such a number of justices of the Supreme Court not being less than 6 as Parliament may by law prescribe.* Mr. Chairman, what is recommended for deletion is the Deputy Chief Justice. We are recommending later that the Deputy Chief Justice, instead of sitting in the Supreme Court where there is the Chief Justice, he should sit in the Court of Appeal which we are recommending for establishing so that he heads that court and as you know down below in the High Court, there is the Principal Judge. So, we would have top brass - we can borrow the military expression. The top brass of the judiciary, one each heading a court. Chief Justice in the Supreme Court, The Deputy Justice heading the Court of Appeal and the Principal Judge heading the High Court. Mr. Chairman, I beg to move.

THE CHAIRMAN: But how do you organise the question of seniority between the members of the Supreme Court who are not Chief Justice and the Deputy Chief Justice who is sitting in Court of Appeal.

MR. MULENGA: Mr. Chairman, there are other provisions in the chapter that in matters of administration, the Deputy Chief Justice is next to the Chief Justice because he deputises for him but as far as question of deciding cases, he remains in the Court of Appeal and they are in the Supreme Court.

THE CHAIRMAN: He is not to be an ex-officio or so. Honorary Member of the Supreme Court like it used to be in case of The East African *(Interruption)*

MR. MULENGA: This has not been suggested because there was a strong feeling that the personnel of these courts should be separated. I am aware, Mr. Chairman, for example, that the Chief Justice of England is a member of the High Court, he is a member of the criminal Court of Appeal and a Member of House of Lords but our committee felt it was not desirable for somebody to be able to sit in a court below and be able to be in a court above because psychologically one would feel that when you meet him down and you appear against him up because he has that connection up there, it may affect your chances if you are appealing against him. So, Mr. Chairman, we had discussed that issue about this ex-officio membership and recommend against it.

THE CHAIRMAN: Hon. Bagena, do you want to speak on this?

MR. BAGENA: Thank you Mr. Chairman. I am actually, getting abit lost because I thought the highest Court of appeal would be headed by the Chief Justice but then may be that is not the case.

THE CHAIRMAN: What they are proposing is that the Highest Court of appeal is the Supreme Court. Then you have an intermediary court - The Court Of Appeal for cases that come from the High Court but you can then go beyond The Court of Appeal. Can I put the question on 160 to Stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: 161. Hon. Mulenga.

MR. MULENGA: 161 Mr. Chairman, the committee recommends that Clauses 1 and 3 be retained and Clause 2 be amended by substituting Court of Appeal for High Court so that the article reads as follows: *'The Supreme Court shall be the final court of appeal and shall be a superior court for record and have all powers of such a court. 2) An appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as may*be *prescribed by law.*

THE CHAIRMAN: Yes, Hon. Elly Karuhanga.

MR. KARUHANGA: Mr. Chairman, I would like to request this august Assembly in the spirit that we had passed in Article 156 that in adjudicating cases of both a civil and criminal nature, a court shall, subject to the law, apply the following principles: b) Justice shall not be delayed; to make it possible for a Ugandan aggrieved party, if he so wishes, when he comes out of the High Court to opt to go straight to the court of the ultimate jurisdiction namely, the Supreme Court if he opts to get a final, quick decision without having to go through the Court of Appeal. But some of the cases will ultimately be decided and if I really want to have my matter determined once and for all and I plead to the High Court let that right be given to me, I should go straight to the Supreme Court without going to the Court of Appeal. I would like to attract the feelings of this House to give me support.

THE CHAIRMAN: Hon. Ben Wacha.

MR. WACHA (Oyam North): Thank you Mr. Chairman. I want clarification from hon.Karuhanga on whether under the principle that justice should not be delayed, an aggrieved party could also opt to go straight to the Supreme Court?

MR. KARUHANGA: Mr. Chairman, given the Supreme Court's overall responsibility for the performance of the lower courts; because whether it be a Magistrate Court, whether it be a High Court, the overall responsibility of the performance of all the courts is vested in the Supreme Courts. Therefore, if in fact, one selects to go straight to the Supreme Court as a court of original jurisdiction, already the Supreme Court has the original jurisdiction in constitutional matters. You can go straight on constitutional matters to supreme Court without even going to any court. So, if you feel aggrieved at any level in court and you want to go to the Supreme Court, I do not see any reason as long as what you are going to argue is a question of law. By the way, for the benefit of the Members who are not in the legal profession, all the decisions which are taken by the Supreme Court form what we call the stair basis or automatically all the courts adhere to decisions and principles established by the Supreme Court. Therefore, I do not see any reason why I , as a citizen, cannot proceed if I want to move to the final court of jurisdiction to determine my matter without delay?

THE CHAIRMAN: Hon. Kawere.

MR. KAWERE (Mukono North): Thank you Mr. Chairman. The whole purpose of introducing the Court of Appeal is to make sure that justice is not only done but it is appearing to be done. Cases that start from the Chief Magistrate's Courts go to the High Court and they have got a chance of going to the Supreme Court. Cases starting with the High Court do not have this chance. Mr. Chairman, I would like to draw your attention to a very wonderful case. The Sure House case. It started in the High Court and went to the Supreme court. Now, what do we think about it? This is the only chance if Sure House case had a chance starting in the High Court, going to the Court of Appeal and then the Supreme Court, justice would have been seen to

be done. I do not know whether justice appears to have been done in that case. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. George Masika.

MR. MASIKA (Mbale Municipality) Thank you Mr. Chairman. What Hon. Karuhanga is raising is really the issue that Members of the Committee II had to deal with in creating the Court of Appeal. There were Members who felt that the judiciary was being made too expensive by introducing a second tier in the judiciary and by implication that cases will be delayed. Now, for my part, I thought it was too expensive at the moment to have the Court of Appeal but the committee did support the issue and we accepted it. If as Hon. Karuhanga now says - a person can from the High Court directly opt to go to the Supreme Court, I can foresee the Court of Appeal becoming redundant because many people will opt for that. It is cheaper and it is faster. Now, it does not develop the judiciary as the committee really decided. This is another way of saying we should not have the Court of Appeal. If you do allow that, the court of Appeal will not have any work. As I have said, and I stress it, because going to the Court of Appeal will delay the process of going to the Supreme Court and it will make it very expensive. So, Mr. Chairman, I think we should discourage the idea of opting to go direct to the Supreme Court, unless we do not want the Court of Appeal.

THE CHAIRMAN: Hon. Dr. Kiiza Besigye.

LT COL. KIIZA BESIGYE (NRA Delegate): Mr. Chairman, I am one of those in Committee 2 who was not happy with the introduction of the Court of Appeal, but I found it very strange that we had many lawyers in Committee 2, and all of them were in unison supporting the creation of this Court of Appeal. I do not know whether it is purely for the benefit of increasing justice or whether it also has something to do with their work. *(Laughter)*

THE CHAIRMAN: Now, Hon. Kiiza Besigye, could you please not impute improper motives in ...*(interruption)*

LT COL. KIIZA BESIGYE: I will avoid to do so Mr. Chairman. Thank you. I have no doubt that whereas it is ideally good to have all these tiers of justice, it is definitely very expensive for the majority of our people to appeal and appeal. The other day, I saw somebody claiming a hundred and something million shillings as charges, it is extremely expensive to go and exhaust all these courts. I think if there is a way through which Hon. Karuhanga's proposal for one to appeal directly to the Appeal Court could be accommodated I would take that one. If, on the other hand, this provision kills the Appeal Court, then it will confirm my fears that the Appeal Court was not necessary. But if some people say it is necessary, and it has work - well and good. If it has no work, at least some people are saved. I think Mr. Chairman, we should look at this proposal with a lot of sympathy and support, it will save the majority of our people.

THE CHAIRMAN: Hon. Okalebo.

MR. OKALEBO (Bukedea County): Thank you Mr. Chairman. Firstly, I would like to point out that opting to go to Supreme Court direct from High Court does not preclude the Supreme Court from referring the same matter to a lower court. So, if the supreme court does this, we must bear in mind that we are even creating more delay in the determination of this matter because it is not a question that once the matter is referred to the court, it must be heard by that court. Secondly, if the option -*(Interruption)*

MR. KARUHANGA: Mr. Chairman, I would fear to inform Hon. Okalebo because of his experience as a former judge. But if, by the same argument which he has presented, the case goes to the Supreme Court and a Supreme Court decides for a retrial at a lower court; how much more time are you wasting if you have not been given a chance to go there but you have now to go through the High Court, the Court of Appeal and then when you get to the Supreme Court, they refer you again to the lower court for retrial?

THE CHAIRMAN: Hon. Okalebo.

MR. OKALEBO: Thank you Mr. Chairman. A retrial ordered by a Supreme Court and referred back to the original trial court is through an established procedure and it is based on a finding of fact or law where they say the lower court might have acted wrongly. That one is estab-

lished as a practice and by law, but if now we begin saying that people begin to opt and once you create an option, even the opposite party must have an option to object or to accept. So, the question of one party walking to the Supreme Court and then I have to follow that party also. You find that when we go into this kind of practice, listening to miscellaneous applications midway, whether the matter should be - for the other party to accept the case going to the Supreme Court or not. This one definitely will cause delay. Secondly, Mr. chairman, the establishment of this Court of Appeal is necessary for our society. We are trying our best to eliminate injustice being administered on our people. We are trying to stop people suspecting injustices in the judicial system. If a person is exhaustively given chances of appeal; this is one way of ensuring that justice is seen to have been done. Because if a case goes to a High Court, a Court of Appeal and then the Supreme Court, I guess people have to be satisfied that the decisions of all these courts cannot be taken to be biased. So, I feel that there should be no option of people jumping the courts in between unless you follow a procedure where a case will be handled by one body, by the one, next one, if need be and then the final one and that is how I think we shall show that justice is seen to have been done Mr. Chairman. Thank you.

THE CHAIRMAN: Hon.Abu Mayanja.

MR. MAYANJA A (Busujju County): Thank you Mr. Chairman. I am really unable to follow the argument for proposing that one should have an option to go from the High Court to the Supreme Court on appeal jumping the Court of Appeal. First of all, the argument appears to be that it is in order to save time but Mr. Chairman, it is not necessary that all cases should end in the Supreme Court. In fact, it is - experience shows- and it is told that the majority of the cases will be determined by the High Court and a fewer number of cases will be appealed to the Court of Appeal and then only fewer of those would go to the Supreme Court. Normally, although it has not been said, there is almost always a provision that the appeal should be on the point of law. There is no reason for supposing and Hon. Karuhanga is a very eminent lawyer, he knows this - he will forgive me for reminding him; there is no reason for saying that the Supreme court has got magic for determining even the essence of the thing in a moral or philosophical sense but of course, we say that it has the final because there must be finality: but generally speaking judges of the High Court, Judges of the Court of Appeal, judges of the Supreme Court - they have the same qualifications. They are very experienced, they are eminent lawyers and so on. It is possible for the High Court to come to an opinion; for that opinion to be reversed by the Court of Appeal and then to be reinstated by the Court of Appeal. So, in other words, there is no reason for saying that unless every case goes to the Supreme Court, Justice will not have been done. Therefore, in order not to create a very dubious situation, it would be an impossible position to say that any party would determine to omit this court. Let us follow the systems - after all, the reason for providing for a large number of appeals is to eliminate the possibility of error; or to minimise the possibility of error. In short, therefore, I think that there should be no such right to frog jump the Court of Appeal and go direct from the High Court to the Supreme Court.

THE CHAIRMAN: I was going to close the discussion on this... Yes, hon. Matovu.

DR. MATOVU (Entebbe Municipality): Thank you Mr. Chairman. I just want to point out that anybody who has ever been Chairman RC III or on the executive of RC III, will understand this point here. If everybody had an option of jumping from RC I straight to RC III - the sheer amount of work that would be done by RC III - in other words the sheer amount of work by the Supreme Court, if we had this option, is going to be too much and then we would run the risk of having justice being delayed because there will be too much work for the Supreme Court. So, Mr.Chairman, I would discourage the idea. *(Applause)*

THE CHAIRMAN: That is a very important assessorial view which I think closes the discussion on that matter. We go to Clause 3. Hon. Mulenga.

MR. MULENGA: Clause 3 - The Supreme Court may,while treating its own previous decisions as normally binding depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.

THE CHAIRMAN: Let me put the question on 161 to stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: 162 - Hon. Mulenga.

MR. MULENGA: Mr. Chairman, the committee recommends that in Article 162, Clause I be amended by substituting 5 for 3. Clause 2 and 4 be deleted and Clause 3 be renumbered 2 and be amended as shown below.
Clause I *'The Supreme Court shall be duly constituted at any sitting if it consists of an even number not being less than 5 members of the court.'*

THE CHAIRMAN: Agreed. Now 2

MR. MULENGA: 2 - *The Chief Justice shall preside at each sitting of the Supreme Court and at the absence of the Chief Justice, the most senior member of the court as constituted shall preside.* Mr. Chairman, the clauses recommended to be deleted are Clause 2. This is as a result of a recommendation that will be made later to give the original jurisdiction on the interpretation of the constitution to the Supreme Court sitting as a full court. Clause 2 here in the draft was relating to the provision where the consideration of the constitutional issues would start in the High Court. Having decided to recommend that to be transferred to the Supreme Court, this became redundant. Clause 4 is a provision that a Supreme Court maybe in two or more divisions. This is envisaged where there is plenty of work so that we could have a division on criminal cases and a division on civil cases. We thought with the creation of the Court of Appeal, that provision would be more relevant to the Court of Appeal where there would be more work than the Supreme Court. It is unlikely that the Supreme Court would, as a second appellant court have such a volume of work as would require to have divisions. That is the purpose of transferring the clause. So, it is not really being deleted but it is being transferred to the article on the Court of Appeal.

THE CHAIRMAN: Okay, I will put the question on 162 as recommended by the committee to stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: 163 - Hon. Mulenga.

MR. MULENGA: Mr. Chairman , the committee recommends that in Article 163 Clause I be retained without amendment and Clause 2 in the Draft Constitution be transferred to Article 167 and a new Clause 2, formerly Clause 5 of Article 164 be inserted after Clause 1. That Clause should then read as follows: *'The Chief Justice (a) Shall be the head of the judiciary and shall be responsible for the administration and supervision of all courts in Uganda.'* Mr. Chairman, there is a minority report shown at this juncture. Hon. Kanyeihamba was leading the consortium, he is not here but I see Hon. Okalebo is part of the consortium recommending that alternative paragraph.

THE CHAIRMAN: I think here, this minority recommendation is to replace paragraph (a) as recommended by the committee majority. So, let us, in accordance with our practice, first of all consider the minority recommendation or report and then see how it proceeds as against (a) of the majority. The minority recommendation apparently is sponsored by a number of members of the committee and there is Hon. Okalebo. So, I give Hon. Okalebo the Floor to speak to the minority report and then we proceed from there Hon. Okalebo.

MR. OKALEBO (Bukedea County): Thank you Mr. Chairman. The minority report on this Clause of this article is on the words *responsible for administration* - that is the complaint. Who forms the minority report. This report arises out of the fact that we have created separate units; given a person to man each one of them; assign the duties to that person and then we should retain and maintain the standard of separation of duties and responsibilities without creating opportunities for collusion in the corridors of administration. That is why the committee on minority report goes to the effect that basically the administration of the judiciary as a department is centred in the High Court; and day to day administration is done mainly by the Chief Registrar of the Courts of Judicature and the duties of this officer include among others - Welfare of the judges of both the High and supreme Court; matters relating to all grades of magistrates

throughout the country, ranging from the complaints by or against these magistrates and other staff; transfers, leave, retirements and the rest of that; receiving revenue returns including compiling lists of new advocates for enrolment and then preparing agenda for discussion by the Judicial Service Commission, arranging transport and maintenance of vehicles for all the judges and other staff, preparing budgetary estimates for the department and present and defend them before the officials of the Ministry For Finance. Maintain courts by way of supplying the necessaries like stationery and so on. Make money requisitions for the various needs of the departments to the treasury. This Chief Registrar works in consultation with the Principal Judge who is actually heading the High Court. Now you see that the Chief Justice being the head of the Supreme Court only performs some traditional functions such as opening of High Court Sessions at the beginning of each year. But even these functions are performed by some Judges who go out on circuit. We may also exercise the traditional duty of enrolling newly qualified Lawyers. Then the Chief Justice also chairs the Judges Meetings which are still organised by the Chief Registrar in conjunction with Principal Judge. These are additional duties the Chief Justice performs, besides sitting in Court in his capacity as the Head of the Supreme Court.

So, you realise that it is actually the Principal Judge and the Chief Registrar of the High Court that are responsible for the administration of the Judiciary as a whole. The day today administration is in the hands of these people. Not the Chief Justice. I would even look at the Chief Justice as a man who has no original administrative jurisdiction. He does not even go out as to appear to be doing the over all administration of this Department for the welfare of the nation and the department itself. Looking at all this, it would be proper and fitting to give the Chief Justice the ceremonial duty of supervising the Courts throughout the country. He is the Head of these Courts and he supervises them when he receives reports or other matters taken to him by those who are responsible for day today administration. That is why we are saying that the phrase responsible for administration should not exist. But the Chief Justice should be given the authority to supervise, since he is the Head of this Department but not necessarily responsible for administration because he does not do any administration. Mr. Chairman, allowing the recommendation of the Committee to stand as it is, will be trying to defeat the very principle of separation of powers created for the three Courts as seen in Article 161, Clauses - 1, 2 and 3. We are saying let us see what each person does in the area of operation he has been given. Let us not create situations where the person, say the Chief Justice will claim that a decision taken by the Principal Judge and the Chief Registrar should be set aside by him singularly and then he wants to put in another of his own because he is the Head of Administration in the Judiciary. You find that there is no way of appealing against his decision and yet maybe the decision of the Principal Judge and the Chief Registrar would have been the best decision for the Department as a whole, for the welfare of the Magistrates, Judges, Clerks and even the peasants who go to Courts. So, how do you say you give the responsibility of Administration to a person who does not even know the smallest details that affect administration of Justice, at the grassroots. Allowing this situation to remain would cause confusion and I am constrained to, say that experience has shown that this kind of thing has led to confusion. This one is not the best we can do for this department which we want to see administer Justice to all kinds of persons without fear, favour or ill will and at the end of the Judicial oath you say, 'And so help me God'. Give the Principal Judge his area of operation, give the Deputy Chief Justice his area of operation, and if there is anything that goes to the Chief Justice, the officials will present it on his Table on a clean plate and it must have the administration of the department running very smoothly to the satisfaction of everybody or the majority of the people. So, Mr. Chairman, we in the minority group felt that the words responsible for administration should be deleted and should be left with the supervision of the department. I beg to move, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates the minority recommendation defers from the majority in the following manner, that the majority are saying, the Chief Justice shall be the Head of the Judiciary and shall be responsible for the administration and supervision of all Courts in Uganda; that is including Court of Appeal and High Court. But the minority view is that the Chief Justice shall be the Head of the Judiciary, we

agreed to that, and shall be responsible for the administration of the Supreme Court and for the supervision of all other Courts in Uganda.

MR. LIIGA: Mr. Chairman, I am a Member of Committee 2 and I subscribe to the minority recommendation. Mr. Chairman, through experience we have noticed, those of us who have been serving in the Judiciary for sometime, a problem where by the Chief Justice using the old formulation shall be responsible for the administration of all Courts in Uganda. There are instances where the Principal Judge could not even carry out such little duties as going around visiting various Courts on circuit and that was because someone was interpreting the expression - administration of all Courts to mean his sole responsibility. Now, we have found that in some areas, you would find two eminent Judges visiting one small grade three Court under the pretext that they are supervising and carrying out administrative functions. Mr. Chairman, that sort of situation was not healthy for the Judiciary because you would find these people knocking at each other, one saying, I am a boss here; I should be the one running around to see how these courts are operating. The other one saying, but please, the High Court is the life of the Judiciary, whoever heads the High Court should certainly be the one to supervise the magistrates - grade two or three, and provide the reports to the Chief Justice accordingly. When we saw that scenario, we thought that for the good of the department, the Chief Justice should take the daily administration of the Supreme Court. He is actually assisted by an officer/ registrar of the Supreme to take care of things like paper, pens, files and going to the High Court to get money because it is the High Court - the Chief Registrar at the High Court who controls the purse for the whole department. Now, when it comes to actual supervision, we do not want the Chief Justice who is actually the Head of the Judiciary to lose that supervision part of it. But as our recommendation goes, he has been given the responsibility of the daily running of the Supreme court while the Deputy takes over the Court of Appeal and finally the Principal Judge takes over the daily running administrative functions solving those small problems in each of the three areas of the Judiciary. We thought that this would be the most healthy way out of these problems so that the magistrate of grade three should not rush directly to the Chief Justice when as a matter of fact it is the Principal Judge who heads the High Court who should take first recognition of whatever complaint. That was our main argument, Mr. Chairman, and I strongly support the formulation in our minority report on the matter. Thank you, Mr. Chairman.

MR. SSENDAULA: Mr. Chairman, I am also a Member of Committee 2 and I oppose the minority report. We took a lot of time over this matter and as you must have observed Mr. Chairman and hon. Members, the people sponsoring the minority report are those who have served in the Judiciary. We would have been very happy to draw from their experience. But what we seemed to observe was that this matter was more of personality differences than anything else. Their argument was not based on principle. The point is when one is responsible as already stated in (a), the Chief Justice is the Head of the Judiciary, but administration is segmented that other people take sole responsibility over administration in some sections/units without considering the Supreme man above, that would be unfair. Such is bound to happen even in other sectors, like if you split a Ministry into three or four departments, everyone is left on his own although you are the Head of the Ministry. But then your sector is only this particular bit which involves either Finance and no more. So, we decided that we will accept to come here so that all of us air our views. We feel that those who are in for the minority are not giving convincing reasons as to why we should not allow the Chief Justice to be also responsible for the administration so that these other people whether we are looking at the Deputy Chief Justice, the Principal Judge, all just report to him as the Head but not them maintaining their independence. Otherwise, we are going to be having segments where each one of them will not have any obligation to report back to this Chief Justice and that is going to create administrative problems. That is my position. Thank you.

MRS. MIRIA MATEMBE: Mr. Chairman, I was also in Committee 2. I first want to say that certainly Hon. Ssendaula was misleading this House when he says that those who support minority were working in Judiciary. Because Mr. Chairman, I have never worked in Judiciary and Hon. Kanyeihamba, Omara Atubo, and the

others too, have never worked in the Judiciary. Therefore, that was misleading the House. Mr. Chairman, I would like to support the minority report. The main reason why we put down this minority report is that we wanted to have justice administered properly without undue interference and we wanted to give each person who is responsible for administration of Justice sufficient power to take charge of his Court and administer properly without undue interference. Mr. Chairman when you consider the word, 'responsible' - when you look at (a), it says, 'shall be head of the Judiciary and shall be responsible for administration and supervision of all Courts. This word, responsible for administration, may as well mean that the Chief Justice will go and involve himself in the day to day running of the High Court. It may so occur that in times when, and actually it has happened, the Chief Justice is not in good relationship with the Chief of the High Court, the Principal Judge, and then once you give him all these powers, he may interfere, the result of which may be poor performance in these other courts. So, we said, to avoid this kind of conflict, and give sufficient powers for Courts to feel empowered, to administer Justice properly, let us make the Chief Justice responsible for the Supreme Court, but let us leave the Principal Judge for instance, to take full charge of his Court but give power to the Chief Justice to supervise because finally he is answerable for Judiciary. I am inviting my Colleagues here to really support this minority amendment because it is very good, it can help us in the administration of Justice. I thank you Mr. chairman.

MR. PETER AKURE: Mr. Chairman, I am not convinced with these people who are supporting the minority report. I am beginning to see the situation where there is going to be confusion. First of all, in an administration, we may have a head prefect in the school. This head prefect will be assisted by other prefects. Out of the duties which the head prefect is to run, part of which duty is to be run by some of his colleagues, like being in charge of discipline and the rest. Now, Mr. Chairman, we are arguing. On the question of who would be accountable in terms of resources between the Minister and the Permanent Secretary, we agreed, both of them should be accountable. In the same line, here is a situation where you are having the Chief Justice and you are having a Principal Judge, definitely the Chief Justice must be the overall of the whole administration in the Judiciary. Now, how do I subscribe myself to my junior. The moment you start dividing jobs, these other fellows may not even respect the Chief Justice. I think Mr. Chairman, for purposes of unity a Chief Justice must be the overall of the whole administration in the Judiciary. Thank you Mr. Chairman.

MR. KAYONDE: Mr. Chairman, I oppose the minority report because it undermines the principles of effective administration. Effective administration is based on the chain of command. There must be somebody in charge of a sector and this sector we have proposed. Also the minority report says, this man should be the head of all the courts. Now, I think there is also confusion between supervision and administration. Some of the minority report supporters, argue that this man should supervise, but they do not want to admit that this man should administer and technically here, I want to say, supervision is part of administration because when you administer you supervise, coordinate, delegate some of your powers - what the Chief Justice will be doing, he will be the head. But all these other functions will be delegated by him to his subordinate staff. So I think the minority report will create chaos within the Judiciary because -*(interjection)*- I have heard some people talking of separation of powers; now you are separating the High Court from the Chief Justice to do what? So, I think here there is a misunderstanding. There must be somebody responsible for this department or section or Judiciary, who will be answerable for effective administration of the entire Judiciary. I think this is within the powers of the Chief Justice. It is not in the interest of the Judiciary to leave the Chief Justice to administer only the Supreme Court, when he is the head of the section. How do you issue orders and directives to the Courts to which you are not administering? So, Mr. Chairman, the Chief Justice should be the Head and be responsible for the administration and supervision of all the Courts in Uganda. I thank you.

MR. RUZINDANA: Mr. Chairman, the minority report is not workable in practice and I therefore, oppose it. Mr. Chairman, if you look at what they are proposing, it is what is in the other administrative structures, something like fed-

eral and in this case it actually cannot work. You get a Chief Justice who is administering only the Supreme Court. Does this Chief Justice have an accounting officer in that Supreme Court for him to administer the Funds and so on in the Supreme Court? Do you also create another accounting officer for the Deputy Chief Justice in the Court of Appeal? How do you link the bigger body from the High Court downwards administratively? It is normal that an institution where responsibility lies must be clear. In this case it is clearly the office of the Chief Justice. The minority report attempts to differentiate administration from supervision. We are told that the Chief Justice should supervise the efficiency of the lower Courts and so on. How does he supervise them without having administrative power? It does not actually make much sense, Mr. Chairman. I do sympathise with the cause for this minority report because in some other capacity I happen to know what has been going on in some of those places. But we cannot make constitutional provisions based on a particular situation in the history of this country. I do think that we should not waste a lot of time on the minority report. It is not workable in practice. It will lead to more confusion. How do you have a Chief Justice who, when he is talking in some forum, he says, I do not know? Or this is the responsibility of the Principal Judge! With whom does the Attorney General deal? Is he going to deal separately with the Chief Justice, the Deputy Chief Justice, the Principal Judge in the matters which they suggest should be within their responsibilities? We should have clearly the Chief Justice responsible for matters within the Judiciary. Within the administrative arrangements, the Deputy Chief Justice could be in charge of his Court. The Principal Judge could be in charge of his Court but as an administrative arrangement and not as a constitutional arrangement. Therefore, Mr. Chairman, I would like to oppose the minority report. Thank you.

THE CHAIRMAN: I think let us decide on this one. The minority report is brought to solicit support from the Assembly for the proposition that the Chief Justice should be responsible for the administration of the Supreme Court and supervision of all the other Courts, and that he may issue orders and direction to the Courts necessary for the proper and efficient administration of Justice. That is the minority report.

MR. MULENGA: Mr. Chairman, the minority report is in respect of (a) alone. We have no quarrel with (b).

THE CHAIRMAN: Now we are deciding on (a) under the minority report and it is supposed to amend (a) appearing in majority report to provide for separation of administration and supervision with regard to the role of the Chief Justice.

I now put the question on minority report as recommended to us by the minority view of Committee 2.

(Question put and negatived)

MR. MULENGA: Mr. chairman, (b) of Clause 1 - Chief Justice may issue orders and directions to the Courts necessary for the proper and efficient administration of justice.

THE CHAIRMAN: Agreed!

MR. MULENGA: Mr. Chairman, wherein the office of the Chief Justice is vacant or where the Chief Justice for any reason is unable to perform the functions of his or her office, then until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has reassumed the performance of those functions, those functions, shall be performed by the Deputy Chief Justice. Mr. Chairman I beg to move.

THE CHAIRMAN: I now put the question on 163 as recommended by the Committee to stand part of the Draft Constitution.

(Question put and agreed to)

ARTICLE 164.

MR. MULENGA: Mr. Chairman, first the committee recommends that Article 164 of the Draft - the provisions of Clause 1, 2, 7 and 8 be synchronised with other provisions in the Draft and the new provisions on appointment to be in new Article 172. The Committee recommends that Clauses 3 and 4 be transferred to new Article 173 on qualifications and for better placement Clause 5 also be transferred to Article 163 which has already been done as noted above. Clause 6 be transferred to new Article 167.

THE CHAIRMAN: Fine, so now there is a new Article 164?

MR. MULENGA: Yes, Mr. Chairman. Mr. Chairman, the Committee recommends that a new Article 164 be inserted to read as follows: *'Any question as to interpretation of this Constitution shall be determined by the Supreme Court, sitting of the constitutional court, whose decision shall be final.'* Mr. Chairman, that is in connection with Clause 1 only. Clause 2 and 3 are not part of the minority report.

THE CHAIRMAN: The purpose of 1 in this case of the minority recommendation is to differ from the recommendation of the majority.

MRS. MATEMBE: Mr. Chairman, the essence of the majority report is that it stops any appeal of any sort. It says that once there is a need to interpret a Constitutional Provision, and there is a case, that case should go to the Supreme Court; it should be heard there and the decision should be final. To us, this appears to be denial of Justice. Mr. Chairman, the reason why there are Courts of appeal is for another opinion. When somebody gets opinion from here, and appeals to another Court but gets the same ruling, he or she may go satisfied that since the two Courts agreed, then - I think it is okay. For you to just be given only one chance and once the case is heard and decided it is final, we thought this would be denial of Justice. We thought that for interpretation of a Constitution, it could start with judges from the Court of Appeal which could constitute this Court, hear a case and once anybody is not satisfied, then we would have another avenue to appeal to the next Court. I think really dear Delegates, you should support us in this matter because to be given only one chance to be heard, is extremely unfair and in our view can lead to miscarriage of justice. I thank you Mr. Chairman.

MR. ZZIWA GEORGE: Mr. Chairman, I happen to be a Member of Committee 2 and we had a thorough look at a number of propositions, and when we came to this one we had quite a number of points behind our decision. First of all we wanted to make sure that constitutional cases are disposed of as quickly as possible so that there is no suspicion and without leaving the country in suspense before they hear of an outcome for the constitutional matter. Secondly, we increased the number of judges in the Supreme Court purposely for this kind of thing. We gave the best brains and made sure that whatever decision or the majority of the decisions to be reached at a Supreme Court should be really transporting Justice and truth. So, we raised the number of judges including the Chief Justice himself and some six other members on this Supreme Court, just to avoid mistakes and make sure that the people who are hearing these cases are credible. Whoever takes the case to the Supreme Court definitely should be satisfied that the outcome would be nothing but justice. So, Mr. Chairman, because of those two reasons, we said that we want to have the outcome as quickly as possible and that the possibility of an apparent Court - a Court having made a mistake we have minimised by increasing the number of judges in the Supreme Court. Mr. Chairman, for that reason we went in for what is known as the majority report which has been embodied in this report. Mr. Chairman, I oppose the minority report. Thank you Mr. Chairman.

PROF. NABUDERE: Mr. Chairman, I want the Chairman of the Committee to clarify the issue by referring to Article 75 which we passed; it deals with fundamental human rights. In Article 75, Mr. Chairman, we agreed that any person who claims that a fundamental right or freedom guaranteed in the Constitution has been infringed to make a claim for redress including compensation. I assume that such a Court may infact be a Constitutional Court. Then Clause 2 says, any person aggrieved by any decision of a court, that is which I have referred to, may appeal to the appropriate court. I considered this a point of order, because if we have already agreed that, a person aggrieved in a judgement of a supreme court in this case, claiming that his or her rights have been infringed, could still appeal under Clause 2. Is this new recommendation not restricting the human rights hearing only to one court? If that is the case does it not go against this clause 2 which infringes rule 48, Clause 11 of the rules of procedure?

THE CHAIRMAN: Yah, I think if we have said that, a person goes to a competent court, and having defined a competent court, and then we follow this logic here, as recommendation is, then the competent court would be the supreme

court. In which case, it would create an inconsistency with that provision relating to the right to appeal. And either we treat that as an internal inconsistency which can be cured at reconsideration stage or we take it into account right now before we really come to the decision. The minority report seems to be looking at that.

DR. KIIZA BESIGYE: Mr. Chairman, I believe that, we have already created such a precedence by saying that, cases of petition for the election of presidency, shall go straight to the supreme court, and in that case, quite obviously these provisions would still be there. So, I think the question is, that you create the competent court to be. If the competent court is the supreme court, then quite obviously that would be - would still be relevant but not applicable in that case.

PROF. KABWEGYERE: Thank you Mr. Chairman. I beg to inform the Hon. Delegates here that, when you read Article 164, Clause I of the majority report, it is very clear that: *Any question as to the interpretation of this constitution shall be determined by the supreme court* sitting as the constitutional court, whose decision shall be final. This is not a usual court case, where you have two litigants fighting for something or a right; it is the interpretation. This is a matter of construction of document and interpretation of statutes. It is different from the usual cases. I have finished, Mr. Chairman.

MR. KAVUMA: Thank you Mr. Chairman. I support the view portrayed in the minority report, because we are building structures and institutions bossing the political field and elsewhere, which are still very fragile. Mr. Chairman, I think it is dangerous to leave a matter of - the importance of the constitution we are writing to one forum alone. You could, unfortunately, make a mistake, and you are struck by that mistake. Of course, the result would be instability in our constitutional set up, where you could have the final draft, only constitutional court deciding and then the legislature comes in to cure what they think has gone wrong by way of amending. I think we are now used to the need for checks and balances in whatever institutions we are building and I think prudence would dictate that, we should at least allow another opportunity, just in case we find there is need to rectify an important constitutional matter. Mr. Chairman, some of those constitutions which have lasted quite a long time are subjected at least to a second opinion. The fact that, you have more judges than you previously had, you may have five instead of three, to me it does not cure the problem. Those, many as they are, could fall into a mistake. And in any case, they are Members of the same court. Their outlook may be different from what actually it should be. That is why, there is need to have any other forum which can look at this. And I therefore, propose that it is good to have, say a court of appeal, look at it as a court of first instance, and if there is need, then the final court would have to come in as the final arbiter. I thank you Sir.

MR. ERESU: Mr. Chairman, as a member of Committee two, this matter was treated very carefully, and I arrived at the conclusion which is our recommendation, after considering that, constitutional mitigation is very expensive. And given the case, If room for appeal is given, some of the litigants may find it difficult to continue with the case. For that, reason; we felt that, there should be a specific court, which should handle that matter. And we trusted the wisdom of the judges to be the factor to consider. We had a case of Hon. Kitariko now, when he had a case to answer, I presume in the high court, it was pushed to the supreme court and that was where it ended, without any judgement. And the case just died due to the change of political times. And even the defendant I understand died. So, Mr. Chairman, these are the factors we have to consider. Thank you very much.

AN HON MEMBER: Point of information.

THE CHAIRMAN: But since you refused the information by leaving the Floor, he has done exactly the same.

MR. KATUREEBE: Thank you, Mr. Chairman. I oppose the minority report. Mr. Chairman, matters of the interpretation of the constitution are not like the ordinary case, where you are determining claims between parties. A situation may arise even in the lower court, giving rise to issues as to the interpretation of given provisions of the constitution. So, you must go to a specific court which tells you, the interpretation. And there is need for definitiveness in the law. Because the constitution must be certain, its

provisions must be known, therefore, if you are now going to provide for appeals, during that period, no one will know what that provision of the constitution means. And Mr. Chairman, I think we will be creating uncertainty in the supreme law. That is the thinking that was behind us in making this recommendation. I am speaking as a Member of Committee two.

MR. OGALO WANDERA: Thank you Mr. Chairman. I am a Member of Committee two, and I support the minority. Mr. Chairman, this must be looked at, from the historical point of view. The historical point of view is that, originally when these provisions were made, and they are there in the 1962 and 1967 constitution, they made the High Court the only body to determine these constitutional provisions. But there was reason for the municipal courts. It is because at that time, we had other courts; supreme courts manned by either foreigners, sitting in Kenya; the supreme court of Eastern Africa. Now, the legislators at that time, were fearful of having a body of justice of appeal - white men and so on, interpreting the provisions of their constitutions without taking into account possibly the peculiar circumstance of a country. Accordingly, Mr. Chairman, this thing has been carried on and on, and what the majority went by, if I recall correctly was that, we should not depart from what had already been decided earlier. Without taking into account the whole historical proposition. The issue of certainty was raised in the committee, but it can be taken care of. When even a question is being interpreted by the high court, still there is that uncertainty. Hon. Delegates have given reasons why it is necessary to have a court of appeal, one of which is that, we should not have errors. Somebody has said here, that the supreme court is made of judges, who are also just like other judges, they can also make errors. So, why is it that, you think that in a question where we are considering a constitutional matter, an error cannot be made, and in other cases, errors can be made. Mr. Chairman, I would humbly appeal to delegates that, the matters of interpretation of a constitution really go to the cracks of an individual's liberty because this is where everybody's rights come from. To leave it to only one court, is highly risky. Give it a chance, like you have given in other cases, you have said so. Why move away from it now? I do not agree with the Hon. Eresu, that because it is expensive, we should cut it out. The law should not take into account matters of expense at the risk of the constitutional right of an individual. Hon. Kitariko's case was a petition, not interpretation of a constitution. These are different things. So, Mr. Chairman and hon. Delegates, I appeal to you to Ugandans a chance, a second chance at least for a proper interpretation of a constitution. Thank you Mr. Chairman.

THE CHAIRMAN: Okay, we shall take one for and another against. I will take one against the Motion.

MR. NASASIRA: Thank you very much, Mr. Chairman. I am also a Member of Committee two. Unfortunately, when this article was dealt with, I was not around, so I am getting an opportunity to make my own contribution on it. Mr. Chairman, I think the key word here is interpretation. It would be dangerous to our constitution, if we had more than one interpretation of it. This is how I see it. You get a court interpreting this constitution in one way, and then you go to another court, it is interpreted contrary to the first interpretation; what kind of constitution you are going to have in that country? So, to me I see this supreme court sitting as a constitutional court, and it is made clear that, it is sitting as a constitutional court. I cannot see a situation where we are going to have two constitutional courts, with two different interpretations. So, in brief, Mr. Chairman, I think the majority in Committee two were correct and the minority are setting a dangerous precedence for our constitution, as far as interpreting it is concerned, and I oppose the Motion.

THE CHAIRMAN: Okay, someone for the Motion. Let us now decide, that the interpretation of the constitution do start in the court of appeal. This is the core of the question before us, as recommended by the minority view of committee two. I will put the question on the Minority report.

(Question put and negatived)

THE CHAIRMAN: Now, I take it that, we have accepted the recommendation as at Clause 1.

MR. MULENGA: Thank you, Mr. Chairman. This is in response to what Hon. Nabudere raised. Mr. Chairman, Article 75 is dealing with

a person whose rights have been infringed and goes to court to prove, that they have been infringed. It is not dealing with the interpretation of the constitution. Such a person will still go to the High Court and he can appeal, if he is aggrieved by a decision of the High court. So, it is not in any way inconsistent with that provision.

MR. WACHA: Thank you Mr. Chairman. I to clarify on this matter. I thank Hon. Mulenga, but I want to add that, in dealing with matters which arise in the infringement of this right, certain issues of the interpretation of the constitution might arise. Should that one arise, then the matter would have to be referred to the constitutional court. Which constitutional court then, would interpret and then send back the matter to the original court which was hearing the matter.

MR. MULENGA: Clause 2, Mr. Chairman: *When sitting as a constitutional court, the Supreme Court shall consist of a full bench of the Chief Justice and all the Justices of the Supreme Court; except that, where any of them is not able to attend, the President shall for that purpose appoint an Acting Justice under clause 2, of article 172.* The reason, Mr. Chairman, if I may explain is that, we felt the entire complement of the court should sit when deciding that question of interpretation of the constitution, and not a chosen panel.

THE CHAIRMAN: So, is that what we could call the full court of the Supreme?

MR. MULENGA: That is right, Mr. Chairman.

MR. KARUHANGA: Thank you, Mr. Chairman. I am very happy with the proposed amendment by the committee. My, however, is on the president, being given power to select another judge, to fill in place of that one who is absent. I know that, it is inconsistent with the power of the president to appoint judges to the supreme court. But this is a case where somebody has lodged a case in court, the court wants to sit but one of the judges is sick, why is it not possible that at that juncture in those circumstances the bench as sitting can pick one of the judges knowing how good he would help them because he may be qualified in a specific area, and might even be sitting at the court of appeal. This information is with the judges not with the President.

THE CHAIRMAN: I think what the Hon. Member is saying is that must you move the President to appoint?

MR. KARUHANGA: Mr, Chairman, especially, if the matter is against the President.

THE CHAIRMAN: Couldn't you make a provision to the effect that the most senior Member, well I mean he could leave out the executive justice of the lower court in this case the court of appeal?

MR. MULENGA: Mr. Chairman, perhaps if Hon. Karuhanga looked at article 172 he would see why we are making that provision. The article 172 Clause (2) provides for filling vacancies or appointing acting justices in the case of the Supreme court where a justice of the Supreme court is unable to act, and it reads; where (b), *a justice of the supreme court or a justice of appeal or a Judge of the High Court is for any reason unable to perform the functions of his or her office...* then we can skip (c), *the President may acting on the advice of the judicial service commission appoint a person qualified for appointment as a justice of the supreme court or a justice of appeal or a judge of the high court to act as such a justice or a judge even though that person has attained the age prescribed for retirement.* So it is not for the court - the supreme court up there to appoint whoever should act as a justice of the Supreme court. That would be breaching the provision for appointment of the acting justice of the Supreme court.

MR. KARUHANGA: Mr. Chairman, after listening to Hon. Mulenga's explanation, I still have a problem on the issue of delayed justice and this is a matter of interpretation there is a question to be interpreted say, in the high court and the matter is a constitutional matter, just one matter of meaning and then you have to go through this? I think what is meant in article 172, is a substantive appointment not just a question of sitting to determine a matter, and I think there could be a difference there. I was quite happy with the Chairman's idea that the next senior judge should be invited, than merely waiting to go through the judicial service commission, then the recommendation to the President even where the matter is just to find out whether the President is entitled to a particular right. This would delay the process.

MR. MASIKA G.: Mr. Chairman thank you. The problem underlying this issue of the full bench is to avoid a manipulation of the court for the purpose of interpretation. If there were a lesser number of the full bench, there would be a temptation of whether it is presiding to big people of like mind to get the decision one. Now for the same reason, Mr. Chairman, if we were to allow the picking of another judge by the judges using probably whoever is presiding, we might run into the same problem of getting a person who is of like mind. Now for that reason the committee felt quite strongly that there should be a proper formula of appointment followed to fill the vacuum. Now Members may think it will delay but as we go along you will notice that the judicial service commission is going to be moreless a permanent commission charged with that responsibility and its availability will be more so, than it is now, and I do not think there will be delays in asking it to recommend somebody for appointment to fill that vacancy even if it is for a temporary measure. So I would support the recommendation as it is.

MR. MULENGA: Clause (3). a person who alleges that (a), an act of Parliament or any other law or anything in - or done under the authority of any law or (b), any act or omission by any person or authority is inconsistent with or in contravention a provision of this constitution may petition the constitutional court for a declaration to that effect, and for redress where appropriate.

THE CHAIRMAN: Agreed next.

MR. MULENGA: (4), *where upon determination of the petition under Clause 3 of this article, the constitutional court considers that there is need for redress in addition to the declaration sought, the constitutional court may (a), grant an order of redress; or (b) refer the matter to the High Court to investigate into and determine the appropriate redress.*

THE CHAIRMAN: Next.

MR. MULENGA: (5). *where any question as to the interpretation of this constitution arises in any proceedings, in a court of law other than a Field Court Martial, the court (a) may, if it is of the opinion that the question involves substantial question of law, and (b) shall, if any party to the proceedings requests it to do so, refer the question to the constitutional court for decision in accordance with Clause (1) of this article.*

THE CHAIRMAN: Next.

MR. MULENGA: (6) *Where any question is referred to the Constitutional Court under Clause (4) of this article, the Constitutional Court shall give its decision on the question and the court in which the question arises shall dispose of the case in accordance with that decision.*

THE CHAIRMAN: Next.

MR. MULENGA: (7). *Upon a petition being made or a question being referred under this article, the Supreme Court shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.*

THE CHAIRMAN: Now I put the question on 164 as recommended to us by the committee to stand part of the draft constitution. I now put the question.
(Question put and agreed to)

THE CHAIRMAN: Hon. delegates, I think we have done quite a reasonable progress, and it would be a fitting point to stop for today and continue tomorrow. I would, therefore, wish to adjourn the House to tomorrow 9.00 O'clock.

(The Assembly rose and adjourned until 9.00 a.m on Wednesday 26th April, 1995)



THE REPUBLIC OF UGANDA

PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

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WEDNESDAY, 26TH APRIL 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 4060]

Wednesday, 26th April, 1995.

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

PRAYERS.

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

(The Assembly was called to order).

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

CHAPTER TEN: THE JUDICIARY.

Article 165 - Tenure of office of Justices of the Supreme Court.

MR. MULENGA (Democratic Party): Thank you, Madam Chairman.
Madam Chairman, Select Committee Two recommends that the provisions of Article 165 of the Draft be synchronised with other provisions in the Draft Constitution as well as new ones on the Tenure of office of the Judicial Officers and be transferred to new Article 174 for the same reasons given yesterday in respect of Article 164 of the Draft Constitution. Madam Chairman, I beg to move.

THE DEPUTY CHAIRMAN: Okay, there does not seem to be any problem so can we proceed to 165?

MR. MULENGA: Madam Chairman, the committee recommends that a New Article 165 be inserted to read as follows: Court of Appeal of Uganda, Clause (1). *"The Court of Appeal of Uganda shall consist of (a) the Deputy Chief Justice and (b) such number of Justices of Appeal not being less than seven, as Parliament may by law prescribe."*

THE DEPUTY CHAIRMAN: There does not seem to be any problem, proceed.

MR. MULENGA: Clause 2: *"The Court of Appeal shall be a superior Court and shall have all powers of such a court."*

THE DEPUTY CHAIRMAN: Agreed. No queries.

MR. MULENGA: Clause (3): "An Appeal shall lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law."

THE DEPUTY CHAIRMAN: No problem.

MR. MULENGA: Madam Chairman, that is all for Article 165.

THE DEPUTY CHAIRMAN: I want to put the question that Article 165 do stand part of this Constitution.

(Question put and agreed to)

Article 166.

MR. MULENGA: The Committee recommends that a New Article 166 be inserted to read as follows: Clause (1). *"The Court of Appeal shall be duly constituted at any sitting if it consists of uneven number not being less that three members of the Court."*

Clause (2): *"The Deputy Chief Justice shall preside at each sitting of the Court and in the absence of the Deputy Chief Justice, the most senior member of the Court as constituted shall preside."*

Clause (3): *"The Chief Justice in consultation with the Deputy Chief Justice may create divisions of the Court of Appeal as the Chief Justice may consider necessary:*
(a) consisting of such numbers of Justices of Appeal as may be assigned to them by the Chief Justice.
(b) Sitting at such places in Uganda as the Chief Justice may, after consultations with the Attorney General by Statutory Order, determine." That is the end of Article 166 Madam Chairman.

THE DEPUTY CHAIRMAN: I put the question that Article 166 as provided by the Committee do stand part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Article 167 - The Committee recommends that a New Article 167 be inserted to read as follows: "Administrative functions of the Deputy Chief Justice." Clause (1) - *"Subject to the provisions of Article 163, the Deputy Chief Justice shall (a) Deputise for the Chief Justice as and when*

the need arises,
(b)be the head of the Court of Appeal and in that capacity, assist the Chiefjustice in the administration of that court."

Madam Chairman, you see there is a minority recommendation but as I pointed out on page 19 on the Note to this Article, this minority recommendation was to be moved only if the recommendations - the minority recommendations in Article 163 had been adopted by the Plenary. Now that it was not, this one lapses and we need not consider it.

THE DEPUTY CHAIRMAN: There does not seem to be any query so we agree on 167 (1)(a) and (b) as originally given by the Committee.
MR. MULENGA: And (c) - *"perform such functions as may be delegated or assigned to him or her by the Chief Justice."*

Clause (2)- *"Where:*
(a) the office of the Deputy Chief Justice is vacant; or

(b) the Deputy Chief Justice is acting as Chief Justice; or
(c) the Deputy Chief Justice is for any reason unable to perform the functions of his or her office, then until a person has been appointed to and has assumed those functions, those functions shall be performed by a Justice of the Supreme Court or a Justice of Appeal designated by the President after consultation with the Chief Justice or the Acting Chief Justice as the case may be."

THE DEPUTY CHAIRMAN: We do not seem to have any problem, can we proceed?

MR. MULENGA: That is the end of Article 167.

THE DEPUTY CHAIRMAN: I put the question on Article 167 that as it is provided by the Committee, Article 167 do stand part of this Constitution.

(Question put and agreed to)

MR. MULENGA: The Committee recommends that Article 166 of the Draft Constitution be renumbered as 168 and be amended to read as follows: Clause (1) *"The High Court of Uganda shall consist of (a) the Principal Judge; and*
(b) such a number of Judges of the High Court as may be prescribed by Parliament."

Clause (2): *"The High Court shall sit in such places as the Chief Justice may in consultation with the Principal Judge appoint and in so doing, the Chief Justice shall, as far as practicable, ensure that the High Court is accessible to all the people."* That is the end of Article 168.

THE DEPUTY CHAIRMAN: I put the question that Article 168 do stand part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Article 169 - The Committee recommends that Article 167 of the Draft Constitution be re-numbered 169 and Clause (1) be recast. Clause (2) be retained without amendment. The Article should read as follows:
Clause (1): *"The High Court shall be a Court of record and shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or any other law."*

Clause (2): *"Subject to the provisions of this Constitution and any other law, the decisions of any Court lower than the High Court shall be appealable to the High Court. That is the end of Article 169."*

THE DEPUTY CHAIRMAN: Okay, no problem. Now, the question is that
Article 169 do stand part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Madam Chairman, the Committee recommends that Article 168 of the Draft Constitution be deleted, the contents having been transferred to new Article 164.

(Question put and agreed to)

MR. MULENGA: The Committee recommends that Article 169 of the Draft Constitution be renumbered 170 and be amended to read as follows:
Clause (1) - *"Where any question is before the High Court for determination under Clause (1) of Article 139, the High Court shall proceed to hear and determine the question expeditiously and may for that purpose suspend any other matter pending before it."*

Clause (2) - "*This Article shall apply in a similar manner to the Court of Appeal and the Supreme Court when hearing and determining appeals on the questions referred to in Clause (1) of this Article.*"

THE DEPUTY CHAIRMAN: I do not see any problem in the House.

MR. MULENGA: Madam Chairman, the Committee recommends that the contents of Clause (1) of Article 170 of the Draft Constitution be synchronised with other provisions on appointment and be transferred to the New Article 172 and those of Clause (2) and (3) be similarly synchronised and transferred to Article 173 on qualifications.

THE DEPUTY CHAIRMAN: Let me put the question on 170 first. I put the question that Article 170 do stand part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Madam Chairman, I had just proposed out of turn that the Article 170 of the Draft Constitution be synchronised with others in similar lines that we did for Article 164.

(Question put and agreed to)

MR. MULENGA: Madam Chairman, the Committee recommends that in Article 171, Clause (1) be amended, Clause (2) be retained without amendment and Clauses (3) and (4) be deleted and the contents be transferred to the New Article 172 and the Article should read as follows:
Clause (1) - "*Subject to the provisions of Article 163 of this Constitution, the Principal Judge shall: (a) be the head of the High Court, and shall in that capacity assist the Chief Justice in the administration of the High Court and courts subordinate to the High Court.*" Madam Chairman, again this minority recommendation appearing at this juncture is also subject or rather was subject to the fate of the minority amendment in Article 163 and has now become irrelevant

THE DEPUTY CHAIRMAN: Okay, that is noted.

MR. MULENGA: "(b) *perform such other functions as may be delegated or assigned to him or to her by the Chief Justice.*"

Clause (2): "*Where -*
(a) the office of Principal Judge is vacant; or
(b) the Principal Judge is for any reason unable to perform
the functions of his or her office, then, until a person has been appointed to and has assumed the functions of that office or until a Principal Judge has resumed those functions, those functions shall be performed by a Judge of the High Court designated by the President acting on the advice of the Chief Justice."

THE DEPUTY CHAIRMAN: There does not seem to be any problem. Now it is the question on 171 as given by the committee that Article 171 do stand part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Madam Chairman, the committee recommends that Article 172 of the Draft Constitution be deleted and the contents be synchronised with the similar provisions and be transferred to New Article 174 on the tenure of office.

Madam Chairman, now we go to the synchronised articles and we start with Article 172 on appointment of Judicial Officers. Clause (1) "*The Chief Justice, the Deputy Chief Justice, the Principal Judge, the Justices of the Supreme Court, the Justices of Appeal and the Judges of the High Court shall be appointed by the President acting on the advice of the Judicial Service Commission and with the approval of Parliament.*"

MR. KARUHANGA (Nyabushozi County): I just wanted to get clarification from the Chairman, Hon. Mulenga, the sequence of events in this approval, how does it follow? Does it mean that the Judicial Service Commission then goes to the President and then he comes to Parliament and the Parliament is the final one or the approval is done by the President as the final person?

MR. MULENGA: Madam Chairman, elsewhere where such approval is sought, it is sought by the appointing authority and once approval is given, the appointment takes effect but they cannot consider someone who has not been appointed. In other words, the Judicial Service Commission would make the proposal to the President. Technically the President could say I am not taking this advice, therefore, it does not have to go to Parliament but

once he accepts the advice, he submits the names to Parliament for approval. That is how I understand it.

THE DEPUTY CHAIRMAN: We go to Clause (2).

MR. MULENGA: Clause (2). *"Where:*
(a) the office of the Justice of the Supreme Court or a Justice of Appeal or a Judge of the High Court is vacant, or
(b) a Justice of the Supreme Court or a Justice of Appeal
or a Judge of the High Court is for any reason unable
to perform the functions of his or her office or

(c) the Chief Justice advises the Judicial Service Commission
that the state of business in the Supreme Court, Court
of Appeal or the High Court so requires,
the President may, acting on the advice of the Judicial Service
Commission, appoint a person qualified for appointment as a Justice of the Supreme Court or a Justice of Appeal or a Judge of the High Court to act as such a Justice or a Judge even though that person has attained the age prescribed for retirement in respect of that office."

Clause (3). *"A person appointed under Clause (2) of this Article to act as a Justice of the Supreme Court, a Justice of Appeal or a Judge of the High Court shall continue to act for the period of the appointment or if no period is specified, until the appointment is revoked by the President acting on the advice of the Judicial Service Commission, whichever is the earlier."*

THE DEPUTY CHAIRMAN: I do not see any query so I put the question on 172, that it stands part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Article 173: Madam Chairman, the Committee recommends that a new synchronised Article on qualifications be inserted to read as follows:
Clause (1): *"A person shall be qualified for appointment as*
(a) Chief Justice, if he or she has served as a Justice of the
Supreme Court of Uganda or the Court having similar jurisdiction or has practiced as an advocate for a period not less than twenty years before a court having unlimited jurisdiction in civil and criminal matters.
(b) Deputy Chief Justice or Principal Judge if he or she has served as a Justice of the Supreme Court or a Justice of Appeal or as a Judge of the High Court or a court of similar jurisdiction to such a court or has practiced as an advocate for a period of not less than fifteen years before a court having unlimited jurisdiction in civil and criminal matters.
(c) A Justice of the Supreme Court if he or she has served as a Justice of Appeal or a Judge of the High Court or a court of similar jurisdiction to such a court or has practiced as an advocate for a period of not less than fifteen years before a court having unlimited jurisdiction in civil and criminal matters.
(d) the Justice of Appeal, if he or she has served as a Judge of the High Court or a court having similar or higher jurisdiction or has practiced as an advocate for a period not less than ten years before a court having unlimited jurisdiction in civil and criminal matters or is a distinguished jurist and an advocate of not less than ten years standing.
(e) a Judge of the High Court if he or she is or has been a Judge of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such a court or has practiced as an advocate for a period not less than ten years before a court having unlimited jurisdiction in civil and criminal matters."

Clause (2) *"Any period during which a person has practiced as a public officer holding an office for which qualifications as an advocate is required shall be counted in the calculation of any period of practice required under Clause (1) of this Article even though that person does not have a practicing certificate."*

MR. KARUHANGA (Nyabushozi): Thank you, Madam Chairperson. I would like to ask for clarification and then make a suggestion so that the clarification can come together with the suggestion. If you look at 173 (1) (a) the requirement for practicing law is twenty years, for (b) it is fifteen years, for (c) it is fifteen years, for (d) ten years and all the way down to (e). Now, we have put the requirement for a Chief Justice at twenty years of

practice, five years higher than the Deputy Chief Justice. The issue we have to take into account here is that disparity of years - five years disparity. If a person is appointed Deputy Chief Justice, having served only fifteen years and thereafter the Chief Justice dies or the Deputy Chief Justice is acting, he would be acting in contravention of the twenty year requirement. Now, in my view I would like to synchronise all these years, all of them, for the Supreme Court and the Court of Appeal to only fifteen years. I would like the Chief Justice to qualify if he has practiced for fifteen years for the reason that this appointment really goes to ability.

It goes to ability in terms of the degree of depth of the individual, his philosophical standing, his intellectual broadness and the admiration that he has in the profession and instead of inhibiting good people because they have not made another five years and putting someone else who would not have otherwise qualified except that for the age - and you know these appointments once you are there you do not move out because the tenure of office for the Chief Justice is so guaranteed - now, I would rather that we put all these people at par, at fifteen and get the best available person to take the top job. Really this job is that of administration and supervision of courts and you probably need a much more dynamic person who is going to move about the country and who probably has the feeling of a country, who is not such a retired age that he is not likely to want to move from the High Court to Nakawa due to the problems of age.

So I would appeal to the August House to say that the Chief Justice, if he or she has served as a Justice of the Supreme Court of Uganda or of a court having similar jurisdiction or has practiced as an advocate for a period not less than fifteen years before a court having unlimited jurisdiction in civil and criminal matter, such a person will be qualified for appointment. After all, this qualification would go through a very rigorous programme, the Judicial Service Commission, the President and Parliament. So then why stifle the ability? What is this anti young people who are able? I think what we need really is that dynamism, that intellectual riches, that philosophical depth, that nationhood, that desire, not age for the sake of age that I want to just die there. I respect age, I respect experience but I think the standards that we have established for this approval is so high that even if you brought the age to fifteen, still the experience would still be taken into account and would probably be a plus if such a person has proven experience and ability. Thank you, Madam Chairperson.

MR. MULENGA: Madam Chairman, the role of a Chief Justice is not simply administration and supervision as Hon. Karuhanga was stressing. Most important is that he heads the Judiciary, he is the leader of the highest court and therefore we must expect in him or we should design a system that would give us maximum assurance for not only competence in administration but also competence professionally. A person that will be respected within the profession and particularly respected by these Judges. The item referred to is in respect of a practicing advocate, that is where the number of years is specified and he is wrongly giving the impression that by the time one has practiced for twenty years, he will be too old and not anxious to travel from the High Court to Nakawa. In fact, we have had this issue discussed before, if we consider that a lawyer starts practice or qualifies to practice at the age say of twenty two or twenty three, you are talking of somebody who is forty three. That age, Madam Chairman, I think, although I have passed it, he is not too old for heading the Judiciary, for being a Chief Justice. I think the disparity between the Chief Justice or the requirement for a Chief Justice and the other Judges is justified because he is heading them and I would like to urge the Assembly to accept the recommendation that it is rationalised, it is based on rational grounds that for this Chief Justice, the man who is going to head all the Judges, there is need for his qualifications to be a little higher than others.

MR. BAGEYA (Kigulu County North): Thank you very much, Madam Chairperson. Whereas I totally agree with the Chairman of the Committee, my fear has been and it has been indicated that when you appoint a Chief Justice after serving twenty years, the qualifications of the Deputy is fifteen years. Now, what would happen in the event of appointing a Chief Justice and then possibly he serves two years and packs? Ordinarily, the Deputy Chief Justice is supposed to take over - *(Interruption).*

MR. MULENGA: No, there is no succession here.

MR. BAGEYA: Thank you very much. I wanted to be clarified on that issue.

MR. ERESU (Kaberamaido County): I would like to clarify to Hon. Bageya that in the event of the death of the Chief Justice, a fresh appointment following a constitutional procedure will be effected. There will be no such a thing like saying because the Chief Justice has died therefore the Deputy Chief Justice will become a Chief Justice. Thank you.

THE DEPUTY CHAIRMAN: I think that is now clear, let me put the question on 173, that it stands part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Article 174. The Committee recommends that a new synchronised Article on tenure of office be inserted to read as follows: Clause (1) "*A Judicial Officer may retire at any time after attaining the age of sixty years and shall vacate his or her office -*

(a) in the case of the Chief Justice, the Deputy Chief Justice,
a Justice of the Supreme Court and the Justice of Appeal, on attaining the age of seventy years; and

(b) in the case of a Principal Judge and the Judge of the High Court on attaining the age of sixty-five years.

(c) in either case on attaining such other age as may be prescribed by Parliament. But a Judicial Officer may continue in office after attaining the age at which he or she is required by this Clause to vacate office for a period not exceeding three months necessary to enable him or her to complete any work pending before him or her."

Clause (2) "*A Judicial Officer may be removed from office only for inability to perform the functions of his or her office arising from infirmity of body or mind or from any other cause or for incompetence, misbehavior or misconduct but only in accordance with the provisions of this Article.*"

Clause (3) "*The President shall remove a Judicial Officer if the question of his or her removal has been referred to a Tribunal appointed under Clause (4) of this Article and the Tribunal has recommended to the President that he or she ought to be removed from office on any ground described in Clause (2) of this Article."*

Clause (4) "*The question whether the removal of a Judicial Officer should be investigated shall be referred to the President by either the Judicial Service Commission or the Cabinet with advice that the President should appoint a Tribunal and the President shall then appoint a Tribunal consisting of -*

(a) in the case of the Chief Justice, the Deputy Chief Justice or the Principal Judge, five persons who are or have been Justices of the Supreme Court or who are or have been Judges of a court having similar jurisdiction or who are advocates of at least twenty years standing; or

(b) in the case of the Justices of the Supreme Court or
a Justice of Appeal, three persons who are or have been Justices of the Supreme Court or who are or have been Judges of a court of similar jurisdiction or who are advocates of at least fifteen years standing; or

(c) in the case of a Judge of the High Court, three persons
who are or have held office as a Judge of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from such a court or who are advocates of at least ten years standing."

THE DEPUTY CHAIRMAN: I do not see any problem from 4 (a), (b) and (c) so you can proceed.

MR. MULENGA: Clause (5) "*If the question of removing a Judicial Officer is referred to a Tribunal under this Article, the President shall suspend the Judicial Officer from performing the functions of his or her office."*

Clause (6) "*The suspension under Clause (5) of this Article shall cease to have effect if the Tribunal advises the President that the Judicial Officer suspended should not be removed.*"

Clause (7) "*For the purpose of this Article, Judicial Officer means the Chief Justice, the Deputy Chief Justice, the Principal Judge, a Judge of the Supreme Court, a Justice of Appeal or a Judge of the High Court.*"

THE DEPUTY CHAIRMAN: I put the question on 174 that it does stand part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Madam Chairman, the Committee recommends that Article 173 of the Draft

Constitution be renumbered 175 and Clauses (1) and (2) be deleted and a new Clause inserted numbered as (1) and that Clause (3) be renumbered as (2) and be amended and a new Clause (3) be inserted. The Article should then read as follows: Clause (1) "*There shall be a Judicial Service Commission to be appointed by the President with the approval of Parliament which shall consist of -*
(a)the Chairman and a Deputy Chairman, who shall be advocates
of not less than fifteen years standing and proven integrity;
(b)three members nominated by the Uganda Law Society, being advocates of not less than fifteen years standing and of proven integrity;
(c)two members nominated by the Public Service Commission who
have distinguished themselves in the public or private sector and are persons of proven integrity."

Madam Chairman, there is a minority recommendation proposing that the Chief Justice and the Attorney General should be added as ex officio members, that it would stand as (d).

Hon. Kanyeihamba was supposed to lead this, he has not turned up but the grounds are or the arguments as you will see appear under the notes. Perhaps we can give it thought as observed from note 75.0. This Article generated considerable debate between delegates who wanted to remove the Chief Justice and the Attorney General from membership of the Commission and those who wanted to retain them as in the Draft or at least as ex-officio non-voting members. The arguments for removal are listed under (a) and the arguments which would support this minority report is under (b) namely that they provide valuable input as they are more in touch with the department, that is the Chief Justice and the Attorney General. Without them the Commission would be deprived of important support and linkage with the Department and the Executive, for example, when seeking approval of appointments in Parliament or when carrying out the new functions set out in Article 176. The work of the Commission is not on all falls with that of the Public Service Commission, so the fear of undue influence can be avoided by making the two officials, that is the Chief Justice and the Attorney General non-voting members although, of course, my experience in that body is that there is never any voting, it is always by consensus that appointments go through. I have spoken for the minority report, Madam Chairman.

MR. KARUHANGA (Nyabushozi): Madam Chairman, I would like to speak for the minority view. I would favour the addition of the Chief Justice on this body and also the addition of the Attorney General on this body. I would also favour that they do not have a vote but that they should be ex-officio members attending the proceedings and participating. The main reason which I have which does not seem to have been written is that these people, these two people do occupy a very serious office. The Attorney General's Office is a very serious office and the Chief Justice, we have already indicated the seriousness of that office. In the course of their work, the Attorney General and the Chief Justice do receive highly confidential information in their profession. They are sensitive to what is going on and when it comes to appointment of Judicial Officers, the Judicial Service Commission would be well advised to have the input of these two very senior people in this profession. It might be possible that they have exclusive information which the people whom we are picking on the streets don't have and cannot be privy to. For that, if we just leave the appointment of Judges to this group of people selected by the Law Society, by the Public Service Commission, by the President who picks the advocates of fifteen years' standing, this might not, in my view, be a good thing.

One can, of course, argue that you see, before the President brings in the two names, the Attorney General would have advised the President or whatever the case might be, but I think that is only in that respect to only two and they may be outnumbered. Therefore, I think for the good of the proper administration of justice, let the whole system be cleaned and let the people who are receiving the information be together and we get good judges. Thank you.

MR. OKALEBO (Bukedea County): Thank you, Madam Chairperson. I do rise to oppose the minority view and I wish to state very clearly in the first place that I am speaking in good faith for the good of the whole nation and not for individual gains if any and which cannot be and I do speak using the experience and that experience should not be judged against me but it should be a guide to this House in knowing what we are discussing and what we would like to achieve under the Constitution for the good of the nation.

I am going to, first of all, comment on what Hon. Karuhanga has said. I would like to state that a

person seeking an appointment in response to an advertisement must by all means, if he wishes to succeed, send his or her credentials and qualifications to a body that is inviting applicants for appointment to a particular post. There is no question of saying that somebody else has a confidential report about another person and that report does not appear before the interviewing body or the appointing authority for whatever post. So here the question of the officers who have been thought to be excluded from this body having confidential information does not arise.

Now, let us look at the position on the ground. There is no plausible reason what-so-ever why the Judicial Service Commission should not be as independent as other Commissions we have established like the Public Service Commission and the Teaching Service Commission. We have to maintain standards and they must be uniform standards if we are to be seen to be uniform and serious and sincere in our deliberations. The Judicial Service Commission whose membership as sought by the minority view should include the Chief Justice or the Principal Judge or even the Attorney General, should be seen, if these ones are included, as not exhibiting to the Judicial Officers like the Judges and the magistrates that idea of impartiality and justice to those Judicial Officers as the Teaching Service Commission for instance exhibits to the teachers. The reason is not very far to find. Here it is. The Chief Justice or the Principal Judge or even the Attorney General may initiate a disciplinary proceeding against a Judicial Officer and in the normal working system of the Judicial Department, the Chief Registrar who is in the capacity of a Permanent Secretary is instructed to conduct investigations into the allegation made against a Judicial Officer and then this very officer is instructed by the Chief Justice or the Principal Judge to maybe interdict this officer as investigations continue. We have seen examples of this and I would not like to mention names. The Chief Registrar obliges and interdicts the magistrate and then carries out the investigations. What do we not know about Elly Karuhanga? What do we not know about Bamwite, what do we not know about the others? He reports his findings to the Judicial Service Commission chaired by the Chief Justice - leave alone chairing but being present in that body when he is the initiator of the complaint, when he is the man who has directed the conduct of investigations and then you have the same member in the same body that is going to discuss and decide the fate of a Judicial Officer. What justice is this going to be leave alone the question of saying well, there is a consensus only in the matter but consider the presence, the mere presence of this person whom you hold in esteem, given him the authority of being the overall administrator, how will you doubt his evidence and come to a just decision if not only to go there and the Judicial Service Commission will be pronouncing the decisions which will amount to a total miscarriage of justice to the Judicial Officers!

Now, Madam Chairperson, in a number of cases, you find that these decisions will end up in punishing the magistrate or a Judicial Officer. Surely in that case the Judicial Services Commission acts as a complainant then also the prosecutor and also the judges acting on the evidence of these persons who are not subjected to cross examination by the person being complained against and then we have talked of giving people power, making sure that we give our people justice not section by section, this should be across the board, that is the nation, in all departments, in all ministries where we establish bodies which are responsible for the welfare of members working in that body. If we have a Judicial Service Commission which is so independent as the committee has recommended, this committee is free to meet and discuss matters of importance or confidence with these respective officers, say the Chief Justice, say the Principal Judge or even the Minister. There is no question of these people being represented there as if they have personal interests. Why do we not want to see justice being done by independent bodies? What do we fear that these officers will lose if they are excluded there, if we are seeing that their exclusion is to the benefit of this body called the Judiciary and persons who are working in the Judiciary and the public at large, what do they lose by not being there? So even their representation which they seek to be there, to me, is not called for. It still goes to smear an image of partiality in the body called the Judicial Service Commission and yet this body would have done and performed a wonderful job if given that opportunity of independence and excluding these persons who have caused the fears and who may continue causing fears in the welfare of other persons.

So, Madam Chairperson, I am saying in finality that I pray the Hon. Members to take this with seriousness if they do not know the sufferance that this

department may have by having in this August Commission members who are also your bosses, members who also are complainants and members who are going to be witnesses and members who are going to participate in the decision making against that individual. So for goodness sake, keep them out and they will be happy where they will be and then they will be consulted if necessary. Thank you.

MR. LIIGA (Buvuma Islands): Thank you, Madam Chairperson. I am opposed to the minority view with respect to the inclusion of the Attorney General and the Chief Justice on the Judicial Service Commission for two very simple reasons. In the first place, although the Chairman of the Committee did not bring it out that much, when we were discussing this particular section, it came out that both the Attorney General and the Chief Justice wield a lot of influence over the decisions of the Commission for the simple reason that these two, each in his own capacity, knows a lot about the Judicial Officers who are serving on the Bench. In some cases, we have had occasions where an Attorney General simply directed a magistrate to release certain individuals and when the magistrate said no, as far as my functions are concerned I do not take directions of that kind to be judicial directions, the man ended up being suspended and what have you. Now, if you had that kind of Attorney General sitting either to consider the promotion of this magistrate or the dismissal, he will rather advocate for the dismissal other than promotion.

Madam Chairperson, human nature has it that when your boss is sitting on a board and you are a member of that board or that Commission, you would tend to go along with your boss in whatever decision that is being made. You will notice from the composition as we have set it out, there are lawyers who must of necessity appear before the Chief Justice when handling certain appeals. Now, if you have been fighting it out in the Commission to make sure that matters take a certain course and you have defeated the Chief Justice with or without his persuasive language and what have you, Madam Chairperson, chances are that you might have to lose your appeal for those hidden reasons which may not be spelt out in the judgement but which would certainly weigh to influence the Chief Justice.

Madam Chairperson, one of the functions we have assigned to the Commission is to advise the President in the exercise of the President's power to appoint persons to hold or act in office such as the Chief Justice, the Deputy Chief Justice and the Principal Judge. Fellow Delegates, if you put the Chief Justice in charge of the Judicial Service Commission and it comes to deciding whether the man should be dismissed from his office, how do you think he will react when he is actually a member of that body! Of course, I know they would say that when we are discussing matters concerning his office, he will not attend but chances are there that his influence might turn out to be adverse when the decision will eventually be made. Madam, Chairperson, without belabouring the point much, it is the best arrangement that we keep the Chief Justice and the Attorney General out of the Judicial Service Commission.

Very many complaints, Madam Chairperson, originate and actually are investigated first by the Chief Justice privately and the Attorney General privately before formal complaints are filed with the Registrar and the Judicial Officer concerned is interdicted and then what has become or what is socially known as "sham justice" follows when this Commission which is chaired by the Chief Justice sits to decide the fate of the person against whom the complaint is made. More often than not, I should imagine even where a verdict of not guilty could be returned, the verdict could go the other way round. To avoid any future recurrence of such situations, Madam Chairperson, I strongly oppose the minority view and I seek the indulgence of fellow Delegates to throw it out. Thank you very much, Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon. Delegates, can I have one in favour of the minority report.

MRS. KALEMA (Kiboga County): Thank you, Madam Chairman. I support the minority report mainly for two reasons. The first one, already in the Articles we have passed said that the Chief Justice is the main administrator and the man at the top of Judiciary. In Article 163 Section (1) sub section (a), it says that the Chief Justice is the head of Judiciary and shall be responsible for the administration and supervision of all courts in Uganda. This man being the administrator I think it is just in order for him to sit on this Commission to know exactly what is going on. It has been argued by previous speakers that he should have already investigated cases which will have been sent to the Commission and for that reason, he does not need to be there. For me,

I say this that for the very reason that the Chief Justice and Attorney General would have already initiated perhaps or recommended to the Judiciary Service Commission cases to be reviewed and discussed, they should be there and if possible explain. They should explain what led them to suggest that these cases should be sent to the Judicial Service Commission and - I do not like the clarification.

MR. HASHAKA (Kibale County): Point of clarification! Thank you Madam Chairman. I would like to be clarified by the Hon. Speaker as to whether being the head of administration of Judiciary, this Chief Justice is immune to take any side or immune to be impartial. May I be clarified, Madam Chairperson?

THE DEPUTY CHAIRMAN: Hon. Kalema, you can wait for the Hon. Obua Otoa so that you can answer at the same time.

MR. OBUA OTOA: (Erute County North): Madam Chairman, I am also seeking clarification from the Speaker holding the Floor. We all know that the President of this country is the chief administrator, every other administrator is below him. Is the Hon. Speaker on the Floor suggesting that the President should also be In the Public Service?

MRS. RHODA KALEMA: I would like to clarify to the two members that we cannot compare the role of the President and the role of the Chief Justice in the respective Service Commission because the Chief Justice is a professional man; he knows what needs to be done in the case of his professional staff, he knows where a professional member of staff fails. In the case of the President, he heads the Public Service Commission for all servants in the Government who are in all sorts of professions. I think there is no relevance here; this is a professional man and he knows the morals, the ethics of his staff - the judges. That is the main difference here, Madam Chairman and for that reason, I believe that it will be very difficult for the Chief Justice to administer and to be responsible for staff whom he cannot - whom they may give to him, because this will also involve appointments of staff, it will involve chipping staff who are not worthy professionally in the course and because they believe that he may be prejudiced, I think he is okay. I will let Hon. Karuhanga inform me, Madam Chairman, that is if you allow him.

MR. KARUHANGA: Point of information! Madam Chairman, I would like to inform Hon. Kalema that the point she is making should not just be brushed aside by Hon. Members. The Attorney General keeps files of all the State Attorneys, he is aware of what is going on in the profession, he probably knows the conduct of all the advocates. The Chief Justice has been given power of supervision of the Courts, he knows confidential information about all the people who are in the judicial service. He has this information and to the benefit of the Judicial Service Commission, we are only inviting him to come and head in the appointment of able people. Now, what members are meaning, they are saying that this Judicial Service Commission will be judging officers and therefore, for those people with that information, it will be like prosecutors with this information. But they are missing the point because if you want to protest against the Chief Justice, you can say that I do not want the Chief Justice to be in the meeting and he will refuse himself, because the matter you want to raise is against him, you will not be one of the people who are judging.

Secondly, he has no vote, the minority report says he has no vote and you can confront him and argue and Madam Chairman, I think members are using their personal historical problems with a particular office.

MR. MULENGA: Madam Chairperson, I would like the House to decide without being misled on the issue of discipline as enforced in the department. The Judicial Service Commission does not sit to judge cases or disciplinary cases. The regulations governing the judicial service commission compel it to appoint a tribunal. So it is the tribunal which decides and no member of the judicial service commission sits on it. So the attack being made that if the Chief Justice is a member of the Judicial Service Commission, he will, in disciplinary matters, be sitting as a judge, and prosecute and so forth is inaccurate. That is inaccurate because there is an independent tribunal appointed to investigate allegations against the magistrates and other junior officers. That one should be understood clearly.

MR. KARUHANGA: I am grateful for that information and I think we should therefore now know that this is just for a question of appointing new judges and new officers and the more reason why we need this information and I thank Hon. Kalema for allowing me to give this information.

MRS. R. KALEMA: I would like to conclude After thanking Hon. Karuhanga and the Chairman, Hon. Mulenga for the information they have given me, and I would like to appeal to Members that we desist from defending and protecting the judicial staff rather than debating a sound service, a sound service is so crucial and we are already aware, the President has mentioned it, the present Chief Justice has mentioned it, we have read it in the papers that there has been a lot of anomalies and inconsistences in the judiciary by the people who are supposed to administer justice. So it is really important that we debate what is really important and what is necessary and what is good for the service itself so that people of this country may get justice not to protect people in the names of justice when they are not. Thank you, Madam Chairperson.

MR. TIBAMANYA A (Kashari County): Thank you, Madam Chairman. First of all, I think the information given by Hon Mulenga is not very accurate because under 176, one of the functions of the Judicial Service Commission is to exercise disciplinary control over such persons and remove them from office. That is 176 (1) (a). So his information was not all that accurate.

Secondly, it will be dangerous to remove the Chief Justice and Attorney General from this commission. In the case of the executive, you have the President, the President appoints ministers and fires them at will to make the system work but in the judiciary, you are making the Chief Justice toothless over the administration of justice once he cannot discipline his officers. The magistrates will be too big headed for him.

In the Draft Constitution Madam Chairperson, under Article 173, the Chief Justice was proposed to be the chairman of this Commission together with the principle judge and Attorney General. If we have said no, let him not be the chairman, then at least let him stay on this Commission to give it due advise and knowledge - extensive wealth of knowledge. In order to make the system he heads work, he needs definitely to have a say over the discipline, over the appointment and so forth of his officers. The minority report is brought in good faith, is well intended and Members should support it. I thank you.

THE DEPUTY CHAIRMAN: I think we have really had enough discussion and it is through the submissions. Now I want to put the question on the Minority Report. I now put the question.

(Question put and agreed to.)

MR. KWERONDA RUHEMBA: I have a problem with 175 (1), but the problem is in respect of drafting I think. Because when you read that Clause, it is like Parliament shall consist of a Chairman and a Deputy Chairman, if you read carefully. So I would have with the indulgence of a Chairman of the Committee Madam Chairperson - I wish we could bring this to the attention of the Technical Committee so that it is properly drafted to reflect this chairmanship and deputy chairmanship to be of the commission other than to be of Parliament as it sounds here.

MR. MULENGA: Madam Chairperson, I do not agree that that impression is created but this matter has been - this draft has been to the Technical Committee, I have no objection to their re-looking at it to see whether anyone can read it the way Hon. Kweronda is doing.

Clause (2) "*subject to the provisions of this article, a Member of the judicial service commission shall vacate his or her office -(a) at the expiration of 4 years from the date of his or her appointment but is eligible for reappointment for one more term; or (b) if he or she is elected or appointed to any office determined by Parliament to be likely to compromise the independence of the judicial service commission; or*
(c) on being removed by the President with the approval of Parliament, but the President may only remove a member for inability to discharge the functions of his or her office arising from infirmity of body or mind or any other cause or from misbehavior or misconduct.

THE DEPUTY CHAIRPERSON: Next,

MR. MULENGA: Clause (3), there shall be -

MR. ABU MAYANJA KAKYAAMA: Madam Chairperson, I would like to know in (2) c) how the infirmity is to be determined, who determines the infirmity? I would like to be clarified on that.

MR. MULENGA: Madam Chairperson, ultimately it is Parliament who when it gives approval. We have not proposed an elaborate procedure like we did for President on how Doctors will determine and so forth, but what is envisaged is that before the President presents the name for removal by the Parliament, he would have to get some evidence and he has to provide the evidence to Parliament that such a person is suffering from infirmity of body or mind.

THE DEPUTY CHAIRMAN: Okay, proceed.

MR. MULENGA: Clause (4) "*there shall be a secretary to the Judicial Service Commission who shall be appointed by the President on the advise of the public service commission.*" That is the end of Article 175.

THE DEPUTY CHAIRMAN: I now put the on 175 that as provided by the committee, it does stand part of this constitution.

(Question put and agreed to.)

MR. MULENGA: Article 176. Madam Chairperson, the committee recommends that article 174 of the Draft Constitution be re-numbered 176, Clause (1) be amended in paragraph (c), a new Clause (2) (b) inserted, Clauses (2) and (3) be renumbered as Clauses (3) and (4) and be amended as shown in the text.

Clause (1) "*the functions of the Judicial Service Commission are:-*
(a) to advise the President in the exercise of the President's power to appoint persons to hold or act in any office specified in Clause (4) of this article which include power to confirm appointments, to exercise disciplinary control over such persons and to remove them from office."

THE DEPUTY CHAIRMAN: Okay, proceed.

MR. MULENGA: (b) "*Subject to the provisions of this constitution, to review and make recommendations on the terms and conditions of service of judges and other judicial officers.*"
(c) "*to prepare and implement programs for the education of and for the dissemination of information to judicial officers and the public about law and the administration of Justice.*"

THE DEPUTY CHAIRMAN: Yes, proceed.

MR. MULENGA: (d) "*to receive and process people's recommendations and complaints concerning the judiciary and the administration of justice and generally to act as a link between the people and the judiciary.*"

THE DEPUTY CHAIRMAN: Yes, proceed.

MR. MULENGA: (e) "*to advise the government on improving the administration of justice;*" and (f) "*any other functions prescribed by this constitution.*"

MR. KARUHANGA: Madam Chairperson, let me start with the last one. (f) "*any other functions prescribed by this constitution.*" I think it should be, any other functions prescribed by Parliament in my view, because really here you are really - I think here you are limiting the functions that can be given to the Judicial Service Commission outside this article. Where else would those functions be, they are already stipulated, but it might actually be that Parliament in its wisdom may want to add more functions to the judicial service commissions and I think we need to -

MR. MULENGA: Can I clarify or inform? There is another article 177 which provides for appointment of other judicial officers and this class as we shall see, this class of other judicial officers, the Judicial Service Commission is the final authority, it does not advise the President to appoint. So this (f) is explicitly referring to that other function. But if Hon. Karuhanga feels that we should insert "Parliament", then it would be in addition rather than in substitution of the expression by this constitution.

MR. KARUHANGA: I think the position is as put by the Chairman, Hon. Mulenga that Article 177 should actually come under Article 176 and it could be 176 (5) or 176 (1) and it should be added on to one of those and replace (f). Because really (f) is saying what is 177 and that is why it is limited. So there is no need for us to fill words in the constitution with (f) and then go and do 177. Let us bring 177 in (f) and then let us extend the functions prescribed by Parliament so that we can even give more effect to (c). Because 176 (1) (c) - "*prepare and implement programs for the education of and for the dissemination of information to judicial*

officers and the public about law and administration of justice". This is very expensive and in the process, you may find that Parliament may need to add more functions of this nature into the judicial service commission. And I think may be the drafters could look at this and see whether they can synchronise 177 with 176 instead of making them separate unless there is a very good reason to make them separate.

MR. MULENGA: Madam Chairperson, I want to inform Hon. Karuhanga that in fact this was an innovation by the Technical Committee. It is the Technical Committee which advised that we insert (f) so that this other function in Article 177 is covered as a function. Madam Chairperson, what Hon Karuhanga is saying can be covered by simply amending (f) by adding "or by Parliament." - "*Any other functions prescribed by this constitution or by Parliament.*" I would have no objection to that to give room for Parliament to improve but not to remove.

MR. KARUHANGA: That is in order, Madam Chairperson.

THE DEPUTY CHAIRMAN: Because the Chairman has consented, we do not have to make this one a substantive amendment, it will be understood as agreed.

DR. MAGEZI DAUDI: Madam Chairperson, I was seeking clarification from the Chairman of the Committee, why doesn't he move 177 to 176 (1), in fact a new sequence to be (a) (b) and (c) because it is talking really about one thing, it is a subject of this constitution and instead of having a particular article on appointment of other judicial officers. What is the scenario.

THE DEPUTY CHAIRMAN: Hon. Magezi the proposal is that it will be the Technical Committee, this was the formulation of the Technical Committee, we can always refer it back. I would not really - we can not really go into the drafting procedure, if we agree in principle then there is still time to see where this one can go.

MR. ABU MAYANJA KAKYAAMA: Madam Chairperson, when you read the opening words of Article 176 (1), it says: "*the functions of the judicial public service commission are...*" they are there and you say they are there in that - then you come and - I will not say that there are others to be found in another article. Surely this is bad drafting with due respect to the technical - whoever is supposed to have done this. If the functions of the judicial service commission are to be stated in Article 176, then even those in 177 should be brought there. But then if you do not say that you are going to say in 177, "in addition to what is said in 176, the other functions of the judicial service commission are..." Madam Chairperson, I hope my learned friend the Chairman of the committee has seen that there is some little need to make it a little lean.

MR. MULENGA: Madam Chairperson, as I have indicated, this is how far the Technical Committee had gone to advise. There is nothing wrong in asking them to re-look at it, and see whether they can improve on it in view of the criticism that Hon. delegates, particularly Hon. Mayanja has pointed out. I think we can ask them. Personally, I do not find difficulty at all, because my understanding is that (f) is put there so that it covers others which are not in here. And 177 cannot properly come within here because it is dealing with - it is providing the judicial service commission with that extra authority whereas others it is advising. This one it acts when dealing with the junior or with the lower cadres of judicial officers. But I would have no objection to referring this to the technical committee and see whether they can improve on it.

MR. ABU MAYANJA KAKYAAMA: Point of clarification! Madam Chairperson, there is one clarification; do they envisage a full time judicial service commission?

MR. MULENGA: Madam Chairperson, we did discuss that and we recommend that there should be a full time office of the commission. While the commission will sit daily is another matter, it will depend on work. But we recommended establishment of secretary to the judicial service commission rather than the current system where the secretary of the public service commission services the judicial service commission because we expected the commission to be more active as the department grows.

THE DEPUTY CHAIRMAN: Okay, we got advice concerning (f) and - 177 or (f) alone?

MR. MULENGA: What is being requested is whether 177 can be synchronised or brought into 176.

Clause (2) "*in the performance of its functions, the service commission shall be independent and shall not be subject to the direction or control of any person or authority except that it shall take into account government policy*"

MR. KARUHANGA: Madam Chairperson, I know that in the constitution we provided for the national objectives and we would like all the various commissions and organs of government to take into account national objectives. But to put in the constitution - in the judicial service commission that they take into account government policy, I am not objecting to government policy because I do not want to be thought of as somebody who is against the government, but I find it odd that throughout the constitution this is the only commission we are saying follows government policy. If we said follow national objectives in the constitution, we would be acting constitutionally. But supposing the government policy is unconstitutional, and is supposed to be challenged? Suppose the government policy is against certain principles which Members here cherish, what is government policy? And how can we really say that - I think what we want to do is that our judiciary is independent of government policy and is free to exercise their minds without any rope around its neck. I would like to appeal to Hon. Mulenga to explain to my satisfaction what government policy is and why it should not be deleted and may be to make it easy -

MR. MULENGA: Madam Chairperson, the explanation I can give is simply what I was given because I was equally skeptical whether this expression could not lead to abuse. But if you look at the Clause as a whole, it is referring first of all to judicial service commission, and it is saying - In performance of its functions, it shall take into account government policy on those functions I presume like, if government feels that for the time being we cannot increase the number of judges to 50, judicial service commission shouldn't sit and appoint 50 people more than the government can afford. In disseminating information about the judiciary and so forth, we have to come to terms with what government is able to do and what it can't do. This is how I understand it and the majority view was that or rather the general view of the committee was that this Clause does not do any harm, but it is capable of interpretation like Hon. Karuhanga is interpreting that it may tie the hands of the judicial service commission.

MR. OBUA OTUA: Madam Chairperson, I am completely persuaded by Hon. Karuhanga's very eloquent argument, and I would like to support him entirely, and I do not think the Chairman of the Committee has particularly a strong feeling about having this offending Clause - phrase removed. Therefore, I move that these words be removed: "except that it shall take into account government policy." I beg to move.

THE DEPUTY CHAIRMAN: Okay, we assume that Hon. Obua Otua has moved and Hon. Karuhanga initiated and at the same time seconding?

MR. KARUHANGA: Following Hon. Mulenga's explanation which he himself then finally found out that it was not valid, and that there could be any other interpretation, I think that he really wanted to withdraw, I wanted to accept and concede that we delete those words without us necessarily going through the voting process but I did not hear those words, and therefore, now I second the Motion put by my friend and brother Hon. Obua Otua.

THE DEPUTY CHAIRMAN: If there is no contrary view, it is so suggested that we remove the words: "*except that it shall take into account government policy.*" That we delete that one, I now put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So it is deleted.

MR. MULENGA: Clause (3): "*the functions of the President and the judicial service commission under this article shall be discharged in accordance with any law made by Parliament for regulating and facilitating the discharge of those functions.*"

MR. ABU MAYANJA KAKYAAMA: Madam Chairperson, I have no objection but I think I would be happier if it was made clear that these functions will be exercised first and foremost in conformity with the provisions of the constitution itself and only secondly in relation because there are many provisions of the constitution which relate to the judiciary which we have passed and those relating to their independence and so on, and this one might mean that Parliament can - I should therefore, wish that this Clause (3) perhaps be made less dangerous

if it was made subject to the provisions of this constitution or something like that.

THE DEPUTY CHAIRMAN. Can you say what you want to say exactly.

MR. ABU MAYANJA: "*Shall be discharged in accordance with the provisions of this constitution and any law made by Parliament*" that is better.

MR. MULENGA: Madam Chairperson, this Clause is specifically for enabling the Parliament to make laws for regulating and facilitating the discharge of the functions in this article. So it is to enable Parliament to make laws for that purpose to regulate and facilitate the discharge of those functions.

DR. KABAYO: Madam Chairperson, I am wondering whether it was a typing error or whether it was intended. I look in this article and I do not see any functions of the President, I do not know whether he meant the chapter not the article.

MR. KARUHANGA: Madam Chairperson, the issue raised by Hon. Kabayo and raised by Hon. Abu Mayanja are correct and I think the interpretation Hon. Mulenga has put has been defeated by the wording. I think I understand that really what they want to do is to enable Parliament to make regulations and facilitate the discharge of these functions - that is the intention of (3). But the way it reads now is that in fact the functions which we have spelt out should be stipulated by any law by Parliament when we have already stipulated them. So I think we should go back to the drafting committee for rewording, and the intention is definitely what the Chairman - what Hon. Mulenga described is not what is read here. What is read here is very dangerous and I think it does not meet actually what he intended to say. So I would propose to him that we refer this to the drafting committee and they come up with the right wording.

MR. LIIGA (Buvuma Islands): Madam Chairperson, I think it would not serve any useful purpose to hand back this to the technical committee. If the chairman of the committee will agree with me, if we took out the words "*of the President*" so that the thing reads: "*the functions of the judicial service commission under this article shall be discharged in accordance with any law made by Parliament for regulating and facilitating the discharge of those functions*", that I think would take care of our fears and doubts by removing the words "of the President" and because when you look at the article, the President himself has no particular functions except that in article 176 (1) the functions of the judicial service commission are to advise the President. Now that is not a function of the President, he is advised to do certain things, and I believe if the chairman agreed with me, we shall improve Clause (3) by deleting the words "of the President" so that the sentence reads as I have already said, Madam Chairperson.

MR. MULENGA: Madam Chairperson, Hon. Liiga is only addressing one point raised by Hon. Kabayo but there was a more fundamental one earlier regarding the purpose of this Clause. If I were to quickly think of how to coup the purpose that I mentioned, I would say something like this that: "*Parliament shall make laws regulating and facilitating the discharge of those functions.*" But I would rather - I am tempted to say, let us refer it to the technical committee to look at it Because the way it is put now has led great minds like Hon. Abu Mayanja and Hon. Elly Karuhanga to interpret differently from what the purpose it.

THE DEPUTY CHAIRMAN: Okay, we refer this to the technical committee. So can we go to (4)?

MR. MULENGA: Clause (4): "the offices referred to in paragraph (a) of Clause (1) of this article are:-

(a) the office of the Chief Justice, the Deputy Chief Justice, Principle Judge, the Justice of the Supreme Court, the Justice of appeal and a Judge of the High Court. And

(b) the office of chief registrar and registrar.

THE DEPUTY CHAIRMAN: Okay, now we take in principal that article 176 all the others are -

MR. ABU MAYANJA KAKYAAMA: Slightly hazy but the office of the registrar is not equivalent to the office of the Chief Magistrate. I would like to know whether the office of the registrar - not chief registrar but registrar, if the office of the registrar is equivalent, as I think it might be, to that of Chief Magistrate, then it should go under 177. But if it is higher of course, it should be different.

MR. KARUHANGA: Madam Chairperson, this is the first time we are meeting office of the Chief

THE DEPUTY CHAIRMAN: It is on page 40.

MR. OMARA ATUBO: - "Oath to be taken by the judicial officers", and I thought you had said it is in the 3rd schedule to this constitution. Madam Chairperson, I thought we had said it is article 178 and it is reading "every judicial officer shall before assuming the duties ... specified in the 3rd schedule to this constitution." We are looking at the 3rd schedule to this constitution then we approve that. So I am wondering the way it is drafted now saying that it is speaking of the sovereign state of Uganda while the other provisions speak of the Republic of Uganda. Because I think this is just picked out of the old 1962 Constitution, we do not have the sovereign state of Uganda Madam Chairperson.

MR. RINGWEGI: Madam Chairperson, what the Assembly has just considered is the provision relating to the oath to be taken and subscribed to by a judicial officer. We have not yet considered the content of that oath. We have only made reference in this article to where this oath will be found. If Hon. Omara Atubo has some serious objection to the content of the oath which has been a provision made available to the committee by the technical committee, I think he should raise his objection at that stage, Madam Chairperson.

MR. MALINGA: I would like to get an explanation from the chairman of the committee as to why it is necessary to specify the oath of the judges here. Why couldn't we have just said that before entering his office the judicial officer will take an appropriate oath specified by law because we have the Oath Act which prescribes all this oath. They couldn't be adjusted from time to time. I think what you would have said is that, they will take the appropriate oath because in that Act it is set out and of course, they modify. But it might become too much if we include all these things into the constitution. I want to be given an explanation as to why we thought it necessary to have the oath set out in the constitution itself.

MR. RINGWEGI: Madam Chairperson, I would like the Hon. Malinga to re-cast his mind to the fact that we had initially thought it wise to provide for the oath for the higher members of the bench like the Chief Justice, the Deputy Chief Justice and Justices of Appeal and the Judges of the High Court, but then we thought it necessary that instead of providing different oaths for these different calibre of judges of the courts of judicature, we should have one oath for all the judicial officers and it should be spelled out in a schedule to the constitution. Just as we have oaths prescribed for the President and I think for the Vice President, all these have been provided for specifically and they have been put in the schedule to this constitution. We did not see any reason why we should not have the same for the judicial officers.

THE DEPUTY CHAIRMAN: So I put the question on 178 that it stand part of this constitution.

(Question put and agreed to)

MR. RINGWEGI: Madam Chairperson, Committee Two recommends that Article 177 of the Draft Constitution be renumbered 179 and be retained without amendment. It reads as follows: *"Parliament may make laws providing for the structures procedures and functions of the judiciary."* I beg to move.

THE DEPUTY CHAIRMAN: I now put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN:179 now stands part of this constitution.

MR. RINGWEGI: Madam Chairperson, Article 180 is only an interpretation article, and the Committee recommends that the following definition article should be included in our constitution. Article 180: *"In this chapter, unless the context otherwise requires, judicial officer means:*
(a) a judge or any person who presides over a court or tribunal how-so ever described
(b) the Chief Registrar or a Registrar of a court,
(c) such other person holding any office connected with the court as may be prescribed by law."

DR. KABERUKA: Madam Chairperson, I just want some clarification, The definition that we were given on that page if the Chairman can reconcile with the one on page 30, in Clause (7). The one we have on page 39 seems to be wider than what we have on page 30 in (f).

MR. RINGWEGI: Madam Chairperson,I think Hon. Kaberuka will agree with me and the rest of the assembly that Clause (7) is making a specific

reference to article 174. So the definition in article 174 of a judicial officer is confined to what is contained in that article and that is why invariably you find that in the interpretation article, the judicial officer is defined in a wider context. It is inclusive of 174, it is more than that.

MR. NYAI DICK: Madam Chairperson, I think may be the chairman of the Committee might help us in this. We have a complete chapter in general matters on page 121 which gives the definitions of all officers. I was wondering whether it would not be reasonable if we included this interpretation under Article 286 of the Draft where there is even judicial power, then you can continue to describe who a judicial officer is. I think it would be better that way, Madam Chairperson.

MR. RINGWEGI: Madam Chairperson, my brother Dick Nyai is concerned with the neatness and since my committee was not really discussing the neatness, only the principles, I think the most appropriate body to deal with the neatness would be the technical committee. But in our committee, we thought that we should provide for purposes of interpretation in the chapter we dealt with and interpretation at a go. I thank you, Madam Chairperson.

AN HON. DELEGATE: Madam Chairperson. I would like to draw the attention of the Hon. Members who are concerned about this interpretation to read the opening of Article 180 which says: "*in this chapter, unless the context otherwise requires...*" Now this is a normal drafting approach that you can interpret certain words which could have been used elsewhere with different meanings. What is contained in Clause (7) of Article 174 was limited to that article, it was written for the purposes of this article. "Judicial officer means..." and it therefore means within this context, you can only understand the term "Judicial Officer" in the terms described for the purpose of this Article but the interpretation section in Article 180 is a wider one which again is subject to respective contexts for example, the one in 174. So when you are reading 174, you know that when you meet "Judicial Officer" you have to study the context and if there is no other context which is varying from what 180 is saying, you therefore interpret it according to 180. This is a normal drafting approach which I do not think will pose any problem. Thank you, Madam Chairman.

MR. BAGEYA (Kigulu North): Thank you very much, Madam Chairman. Madam Chairperson, like other Hon. Members, I am feeling a little bit uncomfortable about having two interpretations on the same issue but they are not exactly the same. On page 30 we are talking about a Judicial Officer in that Article. That is alright, I am comfortable with it but the Judicial Officer on that page means the Chief Justice, the Deputy Chief Justice, the Principal Judge, a Justice of the Supreme Court, a Justice of Appeal or a Judge of the High Court and now on Article 180 the same Judicial Officer means - *(Interjection)*- in this Chapter unless the context otherwise requires, but still a Judicial Officer is bound to cause confusion at a later stage. Right now we may understand it but when the interpretations come up, I personally do not feel extremely comfortable as a lay man.

THE DEPUTY CHAIRMAN: Hon. Kakyama Mayanja wants to bail you out.

MR. ABUMAYANJA (Busujju county): Madam Chairperson, Article 174 talks about the tenure office and it is concerned with the protection of the higher officers of the Judiciary from being politically victimised or whatever. That is why those people are defined for purposes of their tenure. Article 174 is restricted only to the tenure of office of certain higher judicial officers. So you want to protect judges of the High Court, of the Court of Appeal and of the Supreme Court from being interfered with by politics and government. You do not want to protect magistrates, grade II, grade III and that kind of thing. But this 180 is talking of a wider definition of who a judicial officer is so it includes both those who are protected in 174 and others who are not protected by 174.

THE DEPUTY CHAIRMAN: I think that explanation is good enough and I want to put the question on 180 that it does stand - *(Interruption)*.

PROF. NABUDERE: Madam Chairperson, I want to refer to the objections raised earlier by Hon. Karuhanga in reference to the fact that the office of the Chief Registrar and the Registrar just came out of the blue in Article 176. Somehow, this objection was not fully articulated by him and therefore it disappeared in the whole debate. Now it comes up in the definition in Article 180. I would suggest that since it is considered to be an important office to be mentioned in the definition, we request the Techni-

cal Committee to consider including it in Article 173 which talks of qualifications for appointment of Judicial Officers. At the end of that particular Article, the Office of Chief Registrar should be included because it is an important office so that when the office is referred to later on in Article 176 and later on in the definition in Article 180, it would have already been an established office which is recognised within the Constitution otherwise it does not make sense just to refer to it by the way without creating the office under the Constitution.

MR. RINGWEGI: Thank you, Madam Chairman, and I would like to thank both Hon. Elly Karuhanga and Hon. Prof. Nabudere for having pointed out that apparent omission. It is true that the Office of the Chief Registrar and also of other Registrars of the Court are very important offices in the Judiciary and they should actually be mentioned specifically when we are establishing these offices. The Committee concedes to that fact and I think we would readily accept that the Technical Committee - it is our proposal that the Technical Committee should look at incorporating the office of the Chief Registrar and the Registrars of the Court of Judicature under Article 173 or wherever they would deem appropriate. I do concede to that proposal, Madam Chairman.

MR. MAYANJA: Madam Chairperson, in that spirit, I also propose that the Technical Committee - Article 179, Madam Chairman, which we have passed is an enabling Article to Parliament to make laws, I am proposing therefore that this Article 176 (3) should be taken from there and put under Article 179 so that it should be power to make laws for the procedures of the Judiciary and the Judicial Service Commission. Then that should be synchronised, it should be removed from 176 which provides for real powers to do things and this is procedural, it should come under 179. I think that it should read that Parliament may make laws providing for the structures, procedures and functions of the Judiciary and the Judicial Service Commission. That way it will be very clear and there will be no problem, Madam Chairperson.

MR. RINGWEGI: Madam Chairman, you will realise that what Hon. Mayanja is proposing has already been referred to the Technical Committee to recast and to give an accurate interpretation. So if it is a question of synchronising it with Article 180, I think that proposal would not be misplaced.

THE DEPUTY CHAIRMAN: Otherwise in terms of content, 180 is okay.

MR. RINGWEGI: Yes.

THE DEPUTY CHAIRMAN: What we are looking at is to see that it is included in Clause (3) and then 173 as proposed by Hon. Nabudere. So now let us put the question on 180 - the substance. That Article 180 do stand part of this Constitution.

(Question put and agreed to.)

THE DEPUTY CHAIRMAN: Now, we go to the Appendix, to Chapter Ten and Hon. Omara Atubo had a query on the word "State" whether we should have "State" or"Republic".

MR. RINGWEGI: I thank you, Madam Chairman. Madam Chairman, as pointed out earlier to the Assembly by the Chairman of the Committee, this Appendix is the work of the Technical Committee and I had also endeavoured to explain why we thought it is necessary that Judicial Officers should have a specific oath appended in the Constitution. The content of this oath, Madam Chairman, is as it appears on Page 40 of the Committee's report and with your permission, I will read it. Appendix to Chapter Ten - "the Judiciary" should be added to the Third Schedule.

"Judicial Oath: I... swear that I will well and truly exercise the Judicial functions entrusted to me and will do right to all manner of people in accordance with the Constitution of the Sovereign State of Uganda as by law established and in accordance with the laws and usage of the Sovereign State of Uganda without fear or favour, affection or ill-will, so help me, God."

Madam Chairman, I hasten to add that this oath was prepared by the Technical Committee before we discussed the "federo" Chapter and I think they may have envisaged that the word "Republic" may not appear in the Constitution. So when Hon. Omara Atubo is taking exception at the words "Sovereign state of Uganda" I am not very much surprised. I think with your permission, Hon. Omara Atubo may be allowed to put forward his objection.

MR. OMARA ATUBO: Madam Chairman, I am not really raising any objection. This is a matter of

logic and law. Uganda is not referred to even in the Constitution as a Sovereign State, it is referred to as the Republic of Uganda - *(Interruption)*.

MR. RINGWEGI: Madam Chairman, I would like to remind Hon. Omara Atubo that in the Draft we are discussing in this Assembly, Article Four (1) states that Uganda is one Sovereign State and a Republic.

MR. OMARA ATUBO: So, Madam Chairman, we shall say the Constitution of the Sovereign State of the Republic of Uganda. Thank you. *(Laughter)*

THE DEPUTY CHAIRMAN: Agreed?

MR. RINGWEGI: No.

PROF. NABUDERE: Thank you, Madam Chairperson. If you refer to the Schedule Three in the text of the Draft Constitution on Page 143, you see there an oath of allegiance by the President and it does refer to the Sovereign State of Uganda and this oath will appear under the same Schedule so I do now know whether we should use different words to describe Uganda or whether we should use one word. I do not know why the Odoki Commission used there the words "Sovereign State of Uganda" when in fact in the Draft they described Uganda as a Republic. - *(Interjection)* - It is a Draft but the point is that we still have the word "Sovereign" used in this particular oath and in the amendment to the earlier Chapter Two was also incorporated the words "Sovereign State of Uganda". So I think we should retain the words "Sovereign State of Uganda".

THE DEPUTY CHAIRMAN: Now, I put the question on the addition to the Third Schedule.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So the addition to the Third Schedule on Chapter Ten - Judiciary is so included in the Draft Constitution.

Now, Hon. Delegates, it seems we are through with this Chapter and pending the small items we have referred to the Technical Committee which I think are not actually matters of contention, I want to thank the Committee, the Chairman and his Deputy for the very good work done because this Chapter has been discussed in one day or two half days because yesterday we sat in the afternoon and that was half day and now it is half day, it is exactly around 1.00 O'clock when we adjourn. So I thank the Committee for this good report that has facilitated our work.

Now the question is what next. We shall adjourn this afternoon because even the Parliament is sitting so it will give the Parliamentarians a chance to sit comfortably but then we have to know what we shall be doing tomorrow and you will be advised accordingly. We are going to consult with our Technical Committee whether you have work. If you do not have work we shall relay the message to you and we know what next.

We are saying that we adjourn until tomorrow 9.00 O'clock when we shall know exactly whether we have work or what next.

Then I have some very bad news to relay to us, this has been given to me by Hon. Kakooko Sebagereka, that Hon. Margaret Ziwa has lost her husband in a motor accident. I do not have the details so we are just going to try now to find out and the Members will be informed accordingly in the course of the day.
So we adjourn until tomorrow 9.00 O'clock.

(The Assembly rose and adjourned until Wednesday, the 3rd of May, 1995 at 9.30 a.m)

