



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

MONDAY, 12TH SEPTEMBER 1994

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda

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Monday, 12th September, 1994

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

NATIONAL ANTHEM

P R A Y E R S

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

The Assembly was called to order

THE CHAIRMAN: I do not have any Communication from the Chair. Can we proceed please.

REPORT FROM THE LEGAL AND DRAFTING COMMITTEE

THE CHAIRMAN: Hon. Ben Wacha, does the Legal and Drafting Committee have a report?

MR. WACHA: Mr. Chairman, there is a very brief report, Sir. Mr. Chairman, the Legal and Drafting Committee met on Friday, 9th September, 1994 both in the afternoon and in the evening to consider proposed amendments under articles 64 to 71. The Committee decided to deal with the Amendments exclusively, in the hope that at the end of the day, the House will have enough work to deal with till some time in the middle of the week. Hence, leaving the Committee with time to deal with matters which have been referred to it. We sincerely hope this decision is acceptable to both the House and to the Chair.

Mr. Chairman, although we meant to deal only with proposed Amendments, one matter which was referred to the Committee was finalised and we suggest that this matter be handled by the House today. This is the issue of Article 58, Clause (10). The House will recollect that the Amendment under the above was referred to the Committee for redrafting with the aim of eliminating the possible danger of double jeopardy which the sponsors of that Amendment thought was brought out by the Clause. The Committee considered the Article and found that it is a very important Article which was aimed at disciplining members of the Disciplined Forces after such members had served their sentences imposed up on them by the ordinary courts. A draft amendment bringing out this matter was presented to the sponsors who, however, were not satisfied with it. The Members who sponsored this Amendment, have

now come with a proposal that the whole clause be deleted. We propose, Sir, that this should be considered after we have finalised Article 62 which we are now dealing with.

Mr. Chairman, the Committee received few amendments under Article 64 to 71. Two of these need special attention. One is the proposed Amendment under or after article 67 which seeks to specify enjoyment of rights by members of Trade Unions. Mr. Chairman, we did indicate to Members who are sponsoring this Amendment, that the right to enjoy freedom to form and participate in activities under Trade Unions is already prescribed under Article 59. However, the members felt that this was not good enough and they wanted an Article which would specify these rights and so they have insisted in bringing this new Article. Secondly, there is a proposal by Hon. Kagimu Kiwanuka that Article 71 to 74 under the Draft be deleted. Unfortunately, Hon. Kagimu was not present to explain where these Articles should be transferred to. I was advised to talk to him and explain that there are circumstances when it might be necessary for a government - any government to declare a State of Emergency. I have not yet talked to him. But that should be the position. I have also been informed by other Members that they intend later on, to propose that Articles 71 and 74 be transferred to the powers of the Executive and they intend to move an amendment to that effect.

Mr. Chairman, as I stated there were a few Amendments under the proposed Articles and I beg to report, Sir.

THE CHAIRMAN: Thank you for the report and no doubt the Assembly will say a word of thanks, through me, to the members of the Legal and Drafting Committee for the good job they are doing in facilitating our work through reduction of proposed Amendments as Councilors but not as a court and also the members should be thanked for having cooperated. Now, on Friday when we adjourned - I would like to seek some guidance. I think we were still on Article 62 - The Rights of the Children. We had I think disposed of Clause (2) to do with education. The Amendment of Hon. Onegi Obel had been carried and we had other Amendments. I think Hon. Winnie Byanyima had accepted not to pursue a proposed Amendment to Clause (4) to replace 'Welfare' with 'well being'. This is Page 4 of the circulated. Yes, Hon. Ben Wacha.

MR. WACHA: Mr. Chairman, if we are still following the order of the circulated text, we should now be coming to paragraph 14 on Page 4, Article 62, Clause 3.

THE CHAIRMAN: There was circulated text which, I think, the Chair was told, had been a compromise arrangement between the sponsors. Hon. Miyingo Kezimbira, I think, you had compromised in the document circulated, which seems to carry not only your views, but also those of other Members. Do you recollect that?

DR. MIYINGO KEZIMBIRA (Bukoto Mid west County): Mr. Chairman, the situation was that, I was cosponsoring with Hon. Chebet and Hon. Dr. Mugenyi an Amendment which we thought as a new clause to be inserted to Article (62). If you are ready, I could go on, Mr. Chairman.

THE CHAIRMAN: Was it to be an insertion of a new Clause immediately after Clause (2)? Anyway. I now know where we are but before we proceed Hon. Delegates, in the gallery we have got a group of very interested young Ugandans from Kampala Parents. They have come in to see you Delegates decide their future. Unfortunately, they cannot contribute from where they are but I am sure they will mobilise you later on in the evening. Some of you who are either fathers or grandfathers or mothers but otherwise we take note of the fact that the students from Kampala Parents who have come here to join us - You are welcome. *(Applause)*

We are discussing, by coincidence - it was not by arrangement. Because the request to come had been made before we even reached this Article. By coincidence, we are discussing an Article which talks about the rights of children. One of the Articles we disposed of on Friday was relating to free primary education. This was supported by many Members but I think, it was agreed that it should be a partnership between the state and parents rather than the state alone. So, that was what we decided. We did define the question of - Who is a child? We agreed that below the age of 18 for purposes of this 18 is the age. Except for purposes of exploiting of child labour, we said 16 is the age. So that a child of over 16 or say of 17 could freely offer his or her labour to an employer without being accused of exploiting child labour. Now, we are proceeding to the question of the right to terminate an unborn child and this is

the Amendment which Hon. Dr. Miyingo Kezimbira, Hon. Chebet Maikut and Hon. Dr. Mugenyi are sponsors. And I take it that Hon. Miyingo Kezimbira will be the leader of this team and I give you the Floor to present your proposed Amendment.

DR. MIYINGO KEZIMBIRA: Thank you very much, Mr. Chairman. We beg to move a Motion which will insert an Amendment of Article 62 to read as follows: *'No person has the right to terminate - (Interruption)*

THE CHAIRMAN: I think we are moving between Jinja and our own capacity just behind this building. Each time we go off, we either come back here or we go to Jinja - I do not know. If the Hon. Kajura, when he comes, can assure us in his other capacity. Yes, go on.

DR. MIYINGO: Mr. Chairman, I was reading out the Amendment. The Amendment reads: *'No person has a right to terminate the life of the unborn child, except on medical grounds or when the life of the mother is at risk'*. Mr. Chairman and Hon. Delegates *(Interruption)*

THE CHAIRMAN: I think it reads beyond that. The one I have has the words 'or both'.

DR. MIYINGO: Mr. Chairman, we removed the words 'or both' and I thought it had been circulated to you.

THE CHAIRMAN: No, the one we have here reads: *'No person has the right to terminate the life of an unborn child, except on medical grounds or when the life of the mother is at risk or both'*. You are dropping the words 'or both'.

DR. MIYINGO: Mr. Chairman, 'or both' had been put by the technical staff because we had put in words 'and/or' which they said was not acceptable in legal terms. So, they had included both to cater for medical grounds and then the life of the mother. But after consideration, we found that even if we left out both, it would still carry the meaning. So, both, Mr. Chairman, is removed.

THE CHAIRMAN: Is that the understanding of the Legal and Drafting Committee. Let us settle the wording first before -

MR. WACHA: Yes Sir, that is the position. 'Or both' has been deleted.

THE CHAIRMAN: Okay, let us proceed then. I take it that the Motion as read out is seconded. Yes, I can see it is seconded. So, proceed please.

DR. MIYINGO: Mr. Chairman, at this particular moment when we are discussing the fundamental rights of the child, it is important to know that to begin protecting the born child, we must begin by protecting the unborn child. Mr. Chairman, we are trying to promote and protect the rights of the child, we must, therefore, Mr. Chairman, discourage all measures that seem to interrupt and stop the delivery of a child into this world. Hon. Delegates, you will all realise that the biological processes that lead to the formation of the child are not accidental. The acts that lead to the formation of the child are mutually agreed upon by two people and whom nature and God favour and they get a gift out of it. Then, it is really absurd, Mr. Chairman, for one to turn around and destroy the very gift of their labour. *(Laughter)* Mr. Chairman, we are not advocating that we should not have family planning or we should not have birth control. In fact, we are advocates of family planning. All we are saying is that abortion should not be the way to control or to plan the family. We know there are many other ways which we support, like the pill, the coil and the natural means of birth control and we support these.

The Amendment as it stands, Mr. Chairman, only says that the life of the unborn child should not be interrupted unless there are medical grounds which indicate that either the mother or the unborn child is at risk. In Uganda there is a saying that *'Ogalinye gyegava'* which means, Mr. Chairman, that if you want to drink from a stream and then you go upstream, wash into the stream and make the waters turbulent; and then you run downstream to drink from the same water, you will drink bad water. We see that to interrupt and terminate the life of the unborn child is one defeating his own cause.

Mr. Chairman, there are many reasons why abortion should not be encouraged and among these are religious grounds. I am sure each of us has a belief, one or another, and to go against this belief is to go against one's conscience and also to oppose the Act of God, whereby he puts up life from the time of conception. Apart from the religious grounds, there are the moral grounds on which we should be very strong if we have to protect this nation. The young children, like we have in the gallery today, Mr. Chairman, will find reason for carrying out acts of

leading to the termination of life of the unborn child if we do not legislate against it. So from childhood they should know that this is illegal and it is not acceptable in society unless determined by a medical practitioner. My colleague, Dr. Mugenyi will labour so much on the medical grounds of abortion and also will give all problems that are linked with it. We have in society, today, the AIDS scourge which is greatly depopulating us here and the world all over and here in Uganda, with this death rate due to this scourge of AIDS, we need every child to be born so that we can save a few of these to continue our development in this country. We could reach a point, Mr. Chairman, where we could get depopulated so much if we also added on abortion to further decrease the number of children that we have delivered yearly. Mr. Chairman, there is also the uniqueness of the individual. Each of us is a different entity all together. None of us is similar to each other and therefore, the termination of life of an unborn baby or child may be removing from this society some of the very intelligent people that would have saved either this country or could have been leaders or professionals of tomorrow. Mr. Chairman, there is a quotation which I have got from the UN Conference which has been going on in Cairo, where this question is very pertinent to this subject today. *'Every person from the time of conception until his last breathe on earth, is a unique entity and has a right to life'*. So, from the time of conception, up to the time when one breathes the last time on earth, this is an individual who should be given the opportunity to live and live as an individual. Indeed, Mr. Chairman, each person has got his own destiny. The indiscriminate termination of the life of the child kills our future presidents, our future doctors, our future Delegates, our future CA Chairmen of many countries. *(Laughter)*

So, Mr. Chairman, I would like to move and ask the House and appeal to Hon. Delegates who are here that we should support this Amendment so that we can protect these persons whose life can terminated by people who are just selfish to themselves. The saying that we shall get over populated does not arise in our African countries and does not arise in Uganda. We are not over populated. People in developed countries who have taken serious measures, are now finding themselves with a limited population. I have seen this happen in some countries where now if you have to deliver or to produce an extra child, you are even paid for it. We should not reach this stage by promoting these measures

which limit our population and impinge on the right and freedoms of the child by destroying the unborn. Mr. Chairman, I beg to move.

THE CHAIRMAN: Hon. Delegates, the Motion as moved is that we insert a new clause in Article 62 immediately after clause (2) in terms of the Motion as read out namely: 'That no person has the right to terminate the life of an unborn child except on medical grounds or when the life of the mother is at risk.' The words 'or both' have been omitted.

MR. RWOMUSHANA (Bujumbura County): Mr. Chairman, I beg to strongly support the Motion on three grounds. Mr. Chairman, abortion is mainly carried out by Secondary School girls who having become pregnant are always threatened with dismissal from school. Mr. Chairman, the male counterpart is not always punished *-(Interruption)*

THE CHAIRMAN: Hon. Rwomushana, there is information on the Floor from two directions. From Hon. Guma on this side and I think there is Hon. Tumwine on the other side. I think let us start with Hon. Tumwine.

MR. TUMWINE (Youth, Western Region): Point of Information. Mr. Chairman, I wanted to inform Hon. Rwomushana that the statistics available within the medical areas, much of the abortion carried out today, is mainly by legally married wives. It is only that with the school girls it is known and they do not have ability to cover it up and my information is not that I am against the Motion. If I am given chance, I will contribute in favour of it but the statistics given are that much of the abortion carried out today in Uganda, is carried out by married women. Thank you very much.

THE CHAIRMAN: Thank you Hon. Tumwine. Hon. Guma do you still want to inform?

MR. GUMA: That is what I wanted to inform Hon. Rwomushana about.

MR. RWOMUSHANA: Mr. Chairman, the only handicap the informers have is that the said girls do not have the facilities to go to the hospitals or sometimes they do it underground. It is very difficult to get the serious statistics but apparently they do it. What I was trying to labour to put forward was that there is harassment on part of the administration against the said girls who having become pregnant:

in order to cover the said problem, abort. Even culture itself - in our area there is a place called *Kisizi Omwibanga*. Whenever a girl would become pregnant, she would be killed there by the relatives. So, it became a very big problem *-(Interjection)-* No, apparently they do not carry it out, but it used to be carried out and this thing has remained in society. But the question is: how about he who makes the said girl pregnant? In higher institutions of learning, there is one advantage that if you become pregnant and give birth you can come back to school. But in secondary schools, it is very difficult. They are always denied that opportunity. Mr. Chairman, even in the villages it is done by the unprofessional people. Abortion is not administered by the professional and *(Interruption)* by witch doctors on this interruption. So, this one endangers the lives of those who carry out the abortion.

I want to support the Motion, Mr. Chairman, because even in the bible we learn that Mary was troubled and had it not been for the intervention of Gabriel, the Angel, probably something would have taken place. We would have lost Jesus Christ. In so doing, when abortion is encouraged, Mr. Chairman, we may lose people with potential. Even the unborn child has not committed any crime. The crime is only committed by *(Interjections)*. So, with that Mr. Chairman, I wish to support the Motion opposing abortion.

MR. ERESU ELYANU: Point of Clarification. The Motion moved by the Speaker and as read to the House, is not clear to me. When he says that no person has a right to terminate the life of an unborn child, except on medical grounds. I do not understand what the Mover means by other medical grounds, when he also states in the Motion a situation of the mother's life being at risk. I would think, the Motion would have had meaning if he only went on to say, when mother's life is at risk. But when he states other medical ground, I do not now understand. What other medical grounds can be used to justify the removal of a foetus from the mother? Unless that point is clear, I beg to oppose this Motion eventually and *-(Interruption)*

THE CHAIRMAN: Well, I think, let us ask Dr. Mugenyi who is one of the sponsors to clarify what they mean by medical grounds.

DR. MUGYENYI (Isingiro North): Mr. Chairman, as you rightly put it, I am a co-sponsor of this

Motion. Maybe I would just begin by clarifying what Hon. Elyanu John is inquiring about. Mr. Chairman, currently doctors have been conducting abortions. I am informed they have not been doing it under the Law as part of treatment. That is called therapeutic abortion. When you feel that the mother, by continuation of that pregnancy, is seriously at risk; we have got medical conditions - like if somebody has got a severe heart failure. The continuation of that pregnancy will end up in the death of the mother and of course, the child. So, that is a medical ground for a doctor to conduct an abortion. Two, when there are some congenital abnormalities in the foetus and you feel that this foetus will not be born and be a useful person. We have got some genetic abnormalities, some syndromes which occur in a foetus and which fortunately enough we can now detect with the current technology which is available.

Mr. Chairman, I have had chance to look through the present Law. It so seems that doctors have been doing this without the cover of the Law because the Law which we are using was used in Britain in 1861, when actually by then, there were no technology to diagnose any abnormalities in a foetus. So, in this we are saying that with the current technology in place, if a doctor feels that this foetus will not be born to be useful, why should we punish the mother to carry this foetus that will result in an imbecile at the end of the nine months? Why do we not put in a provision to allow the Doctor to go ahead and terminate this pregnancy? Similarly, with the current technology like ultra sound and so on, you can detect dangers to the mother and therefore, you agree and terminate the pregnancy.

So, for purposes of Hon. John. Elyanu, there are two different things. You can have other medical grounds which are not a risk to the mother. If a foetus has genetic abnormalities, it may not necessarily be a risk to the mother but it is useless for the mother to continue. So, that medical ground is useful in this Amendment and risk to the mother is also useful. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Nsibambi had wanted to move an Amendment. Let us give him the Floor first.

PROF. NSIBAMBI (Presidential Nominee): I am asking the Mover to include an Amendment which says that *'except where the said pregnancy is a result of rape'*. In other words, I would like to include rape and I am ready to articulate the reasons

THE CHAIRMAN: Now, let us move in an orderly manner. Order! Order! Hon. Apollo Nsibambi has proposed an Amendment. Although, I would rather he properly inserted it so that we know how the full sentence would read if that was to *-(Interruption)-* Now, I do not know whether that Amendment was seconded. Is it seconded? I can see a lot of 'yes' on the Floor. So, it is seconded. *(Interjection)* No, just a moment. A Motion has been moved and it has been seconded by Hon. Nsibambi to the original Motion. Now, what I would like to hear is the manner in which the Amendment is sought to be incorporated in the present text. I think, Hon. Kirenga has offered to assist Prof. Nsibambi.

PROF. NSIBAMBI: Let me articulate and then he can assist me *-(Interruption)-* as a lawyer.

THE CHAIRMAN: No, we cannot debate what we do not know.

PROF. NSIBAMBI: Okay, I am saying *'except where the said pregnancy is a result of rape when the life of the mother is at stake'*.

THE CHAIRMAN: You see Professor, what I am pushing this for is, you have a text here reading: *'No person has a right to terminate the life of an unborn child except on medical grounds or when the life of the mother is at risk'* - you want to add another *'except...'* Now, that does not make sense in terms of legal drafting. That is what I am trying to say and if you want your Amendment debated, then let us get that inserted properly in the text. And that is where I thought Hon. Kirenga should give his legal assistance, then you can expound on the grounds why you think that. that should be so and then we determine whether we support you or not. Hon. Kirenga.

MR. KIRENGA (Mityana North): Thank you very much, Mr. Chairman. I am also in favour of the Amendment but it should read as follows: *'No person has a right to terminate the life of an unborn child except on medical grounds or when the life of the mother is at risk or when the conception was a result of a criminal act'*. The conception should not have been out of rape but also other criminal acts like defilement and something like that.

THE CHAIRMAN: Now, if I was asked to draft this, I would have put it this way - *'No person has the right to terminate the life of an unborn child except - (a) on medical grounds or when the life of*

the mother is at risk; (b) in the case of rape or criminal conduct'. Then you would have two legs to it. The (a) and (b) both being exceptions in their own right. Now, if that rendering were accepted, and I am not imposing it on the Mover, then we can have on the Floor a proper Motion to be debated.

MR. KIRENGA: Mr. Chairman, I think your wording is preferable. So, in other words, I can read it. The Amendment is like this - *(interruption)*

THE CHAIRMAN: Let us listen to the text first because Members are anxious to debate what is not there. Let us first get - Order! Order! Could you listen to Hon. Kirenga, please.

MR. KIRENGA: *No person has the right to terminate the life of an unborn child except (a) on medical grounds; or (b) when the life of the child is at risk; or (c) when conception was a result of rape or other criminal act.*

THE CHAIRMAN: Okay, now it has been broken up even more conveniently into three legs. We have an Amendment proposed and seconded. I now give Prof. Nsibambi the opportunity to expound on his Amendment. We shall debate that Amendment and dispose of it before we go back to dispose of the original amendment. So, Hon. Nsibambi, you have the Floor.

PROF. NSIBAMBI: Thank you, Mr. Chairman. As you all know, rape is dehumanising; it is also humiliating. Worse still, because of the problem of rape, it is more dangerous these days for obvious reasons. The scourge of AIDS, as you know, has already done a lot of harm to this country. That is why I am asking Hon. Members to include rape as a condition under which termination of pregnancy should be allowed. Thank you.

MR. OKALEBO (Bukedea County): Thank you, Mr. Chairman. I do oppose the proposed Amendment on the following grounds. The aim of a rapist is not to get a child. So, Mr. Chairman, we cannot begin discriminating as to the cause of life. The objective of this Article is to protect life regardless of its cause and we cannot begin ascertaining as to how and when life came in a proper manner - whether by rape or not. So, Mr. Chairman, when we begin doing this, we shall find difficulties in implementing the Law because we shall first of all go up to the root of

how that life came into existence. If we were to protect life of an unborn child, let us not look at how it came into being but protect the life of a child. So, this Amendment, Mr. Chairman, I think to me, is not effective. It is not proper as it goes ahead to destroy the very objective of protecting life. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Loote did you want some Clarification.

MR. LOOTE: Point of Clarification. Thank you, Mr. Chairman. I would like to seek clarification from the Mover of the Amendment on two things:

- 1) How do we determine that this is a child out of rape?
- 2) How come that the rape case had to stay for nine months without rectifying the situation right up to the time of the thing? So, I do not know how could we come to determine this is the child of rape after nine months.

THE CHAIRMAN: Hon. Nsibambi would you like to clarify that.

PROF. NSIBAMBI: Thank you, Mr. Chairman. Rape can be medically certified. So, in other words we would like to use professional methods of certifying rape and if necessary, it can also be legally certified. So, you can use a two-pronged approach. The medical and legal approach. With regard to the second question, it is not an important issue because we are talking of terminating pregnancy at an early stage before things go far.

MRS. LAGADA (Apac District): Thank you, Mr. Chairman. I would like to support that Amendment. Hon. Members, I am sure that everyday practically everyday these days in Uganda, we read in the newspapers of cases of rape and cases of defilement. Sometimes the girls are 14 years and that sort of thing. I also remember a case, Mr. Chairman, of a student of Sacred Heart Girls' School, who was abducted by the Kony rebels and taken in the bush. The girl came back pregnant and there was a very big debate on whether the pregnancy should be terminated. Definitely, the girl and the parents did not want the baby that had been forced on the child. So, I am supporting this Amendment because when you think of a case like that, how can you force a little girl - First of all, she has already been traumatised psychologically and you want the evidence of that trauma to remain with her for the rest of her life. As

the Mover of the Motion already explained that when a person is raped, there is medical evidence. There is a police report in the first place and medical check-up. Now, if such a rape case should end in a pregnancy, surely the human being who has been traumatised has the right to get rid of that child. I think we will be asking too much from our daughters and mothers - even married women are raped these days, to be subjected to such things. So, Members, I beg you to support that Amendment. I think one should not be forced to keep a child of a rape case. It is bad enough already. Thank you.

REV. FATHER BATANYENDE (Presidential Nominee): Thank you, Mr. Chairman. I strongly and vehemently oppose this Amendment - (*Applause*)- for the following reasons: If this Amendment is carried, Mr. Chairman, I think we shall be giving free license to our youngsters to engage in sex before marriage, since they know that once they become pregnant, they will automatically abort. Secondly, (*Interruption*)

THE CHAIRMAN: Which one, Father Gaitano, are you debating? Because we have two situations.

REV. FATHER BATANYENDE: The rape.

THE CHAIRMAN: Okay, because I thought you are about to start talking about the original one.

REV. FR. BATANYENDE: No, no - the rape thing. Secondly, Mr. Chairman, suppose Miss X or Miss A willingly accepts boy B and they engage themselves in sex - First of all, the act of sex is for the enjoyment, but not for the girl to become pregnant. Now, suppose a girl agrees with boy X and afterwards she becomes pregnant; she will come and say she was raped. Now, some women are saying that everyday their husbands rape them. So, they will say pregnancy came about because of rape. (*Laughter*) So, let me terminate the pregnancy. So, Mr. Chairman, I think by passing this Amendment, we are legalising abortion and it would be dangerous for our country. Mr. Chairman. I oppose it.

MR. NJUBA (Kyadondo East): I would like to support the Amendment to include rape but, Sir, I would like to seek Clarification from the Mover because they added 'or as any criminal act'. I think that addition makes the provision too wide because even adultery, strictly speaking, is a criminal act. Supposing, God forbid, my wife had an adultery act

with somebody else, could that be a good ground for her to obtain abortion. So, I think we better cut off the criminal and we confine it to a specific criminal act, which is rape. I beg to move.

THE CHAIRMAN: Are you, therefore, proposing an Amendment. Can I hear from Hon. Kirenga in view of the grounds advanced by Hon. Njuba with regard to the text.

MR. KIRENGA (Mityana North): Mr. Chairman, the rape, of course is mentioned. The other criminal act we have in mind is defilement. Defilement is almost like rape except it is done on a victim who is not yet of a mature age.

THE CHAIRMAN: Why do you not say so?

MR. KIRENGA: Okay, we can say rape or defilement because you see if it comes to rape or defilement, Mr. Chairman -

THE CHAIRMAN: Hon. Delegates, there are two propositions now. We have been debating a situation where termination is being sought on grounds of rape and it was extended to include 'or other criminal act'. Arguments on the Floor are that 'or other criminal act' could extend to include acts such as adultery - although, I do not know whether the law should not be amended to change that - but if, as it stands that could be a criminal act and the question was, should abortion be procured on the basis of that? One of the proposers of the Amendment is prepared to be more specific and say *rape or defilement*, so that the words 'or other criminal act' are removed.

Now, can we hear arguments for or against that proposition with regard to narrowing down the matter.

MR. MASIKA (Mbale Municipality): Thank you, Mr. Chairman. Criminal acts are not restricted to rape and defilement alone. We have incest, which is also a criminal act and for which the relatives, may want the baby removed. So, narrowing it down to two does not save the situation. I would prefer it remaining simply a criminal act. Pregnancy arising from a criminal act.

MR. MAYANJA A. (Bussujju): Thank you, Mr. Chairman. Supposing somebody comes to a woman and lies with concealment or things like. He pretends

that he is her husband *-(Interjections)* - Yes, these things have been known. So, in other words, there are quite a number of criminal acts, Mr. Chairman, *-(Interruption)*

THE CHAIRMAN: But Hon. Mayanja, you agree that would amount to rape really - under the present definition of rape. Is it not procuring sexual intercourse with a woman either through fraud or by application of force.

MR. MAYANJA: All the same, Mr. Chairman, I would support the Amendment as originally proposed. In other words or other criminal act.

MR. CHEBET MAIKUT (Kween County): Thank very much, Mr. Chairman. I wish to strongly oppose the latest Amendment by Hon. Nsibambi on the grounds that our first Motion, in our view and from the view of the Learned Fellows, stipulates that the cases of rape or victims of defilement are already catered for under that Motion and if I am given opportunity, Mr. Chairman, I think we are prepared to defend our case of the first Motion as one of the co-sponsors,

THE CHAIRMAN: No, you will have that opportunity later.

MR. AWORI A. (Samia Bugwe North): Mr. Chairman, I beg to oppose both Amendments on technical grounds.

THE CHAIRMAN: No, we are discussing the one on rape or other criminal act. It would appear from legal opinion that substituting with the word defilement will be narrowing it too much. So, let us debate the original Motion as it was proposed by Hon. Nsibambi and improved upon by Hon. Kirenga. That is what we are debating

MR. AWORI: It defeats my position but nevertheless, Mr. Chairman, I believe this is another Amendment which is turning this CA into a Parliamentary Session. *(Applause)* Mr. Chairman, I believe we are supposed to make the fundamental law. I would have thought or I would like to recommend to the Movers of the Motion that we make a generic constitutional provision for parliament to make laws governing the unborn child. If we go into details, we are preempting medical technology whereby these days babies are even made in a test tube in a laboratory. How do you govern such a situation?

We cannot make a law in the CA at the moment trying to preempt medical development.

Secondly, Mr. Chairman, I believe that the women who bear these children have a right to their bodies. They are the final custodians. They make the child, they have the right to dispose of it. It is a matter of choice.

THE CHAIRMAN: You are now going into a general debate.

MR. AWORI: Mr. Chairman, if I am deviating when I say the women have the right to dispose of the unborn I am also saying in the same context, but it is true that scientists in a lab who might be making a child by bringing two eggs together. These may have the right to destroy their experiments. Are they going to be subject to the same law? I would say, Mr. Chairman, we make what they call a generic or omnibus Constitutional Provision governing the unborn child.

BRIG. KYALIGONZA (Buhaguzi County): Point of Information. I would like to inform the Hon. Speaker now on the Floor that in joint ventures, you cannot decide to dissolve a company without the involvement of partners. Therefore, this being a joint venture of a man and woman, the woman has no right to absolve that association without the consent of a husband or a man *(Interruption)*

THE CHAIRMAN: That was more of an argument than information.

THE CHAIRMAN: Hon. Ben Wacha, you had some information.

MR. WACHA: Mr. Chairman, I was trying to withhold this information to see how the debate on the Floor proceeds. Mr. Chairman, when this matter came before the Legal and Drafting Committee we advised that abortion essentially was not a Constitutional matter. Our view was that this matter has been covered by the Penal Code, although the Penal Code does not cover the exceptions - the exceptional grounds of medical abortion. We were of the opinion that if the matter came before Parliament, these exceptions could be provided for. That still, Sir, is our opinion. *(Applause)*

MR. AWORI: Mr. Chairman, I would also like to add *-(Interruption)-*

THE CHAIRMAN: No, I thought you had finished.

MR. AWORI: There was information, that is why I surrendered.

THE CHAIRMAN: Okay, could you wind up because, I think, we should pronounce ourselves on this Amendment. I think we have had a very good debate just to finalise. Hon. Leander Komakec, must you? Okay.

MR. AWORI: Do I have the Floor?

THE CHAIRMAN: No, just a moment, I do not think if we begin making it an altercation - you made your contribution.

MR. AWORI: They gave me information, Mr. Chairman. Hon. Brig. Matayo Kyaligonza and Hon. Ben Wacha gave me information.

THE CHAIRMAN: And you had finished, anyway, before they gave the information. The only thing that the Chairman did was allow information.

MR. AWORI: Then how did they give information when I had finished? What were they reacting to?

THE CHAIRMAN: It was by discretion. Anyway, could you be very brief. Because I think we are taking a lot of time.

MR. AWORI: No, I leave the Floor to him, Mr. Chairman.

THE CHAIRMAN: Okay. Hon. Leander Komakec and then we shall have Hon. Byanyima and then we pronounce ourselves on this Amendment.

MR. KOMAKEC (Alur County): Thank you, Mr. Chairman. I rise to oppose this Motion in that it is aiming at legalising abortion. Mr. Chairman, we must realise that at this moment - *(Interruption)*-

THE CHAIRMAN: Which one are you opposing now? The Amendment by Hon. Nsibambi or the original Amendment?

MR. KOMAKEC: The one we are debating right now. The amended *(Interruption)*

THE CHAIRMAN: I think you have a problem there. We want to determine whether we should add the two legs of rape or other criminal act.

MR. KOMAKEC: Yes, I am opposing that one because I think it is in fact, going far into details of how the question of abortion should be handled. I would agree with what Mr. Awori was saying that we are trying to become too restrictive in the formation of the constitution. We should leave room for parliament to make Laws that would take exception to cases. Things do change; society changes; circumstances change. Knowledge grows and in light of this fact. Parliament of the day should be free to make pronouncement of past Laws that would regulate the problem. And I think this question of rape and other criminal acts should be left to Parliament. On the other hand I would support the idea of the original but I fear that I may not be given the time.

THE CHAIRMAN: No, but if you speak now you will confuse us.

MR. KOMAKEC: Well the point is that, extending the provision to other criminal acts and defilement and rape, I think is going too far into detail. We should only agree on the principle. So, for that reason, for being too detailed and too restrictive, we are in fact being unnecessarily open to legalising the killing of the people who cannot defend themselves. So, I oppose this Amendment. Thank you.

MISS BYANYIMA WINNIE: Mr. Chairman, to me I think this Amendment is as unnecessary as it is unfortunate. The values of our people are in question here. How do they view the unborn child?

THE CHAIRMAN: What are you debating now? Are you debating the Amendment of Hon. Nsibambi or the general statement because we want to dispose off Hon. Nsibambi's Amendment then come to the original.

MISS BYANYIMA: Mr. Chairman, I am not speaking on the general subject, I am speaking about that Amendment to include rape and cases of criminal act. But to me all those put in question the values of our people and I was going to say that in my Constituency, if I can speak for that area, if anyone came in front of any group of people there and talked about the right of a woman to her body and to kill an unborn child, they would be shocked. When we talk about the child of a rape victim - alright a woman's life has been hurt or a girl's life has been hurt. But who knows what that child is going to be; that child that is in the womb? May be it is the future president of this country. Children have been born in very, very horrifying circumstances but they have lived and grown to be great people; to be useful individuals

Mr. Chairman, I recognise the right of a woman to have full normal life. But that should not jeopardize a life of a child that is going to be born, and this is the view of the majority of the people where I come from and I would even imagine that it is the view of most of the people in Uganda. Mr. Chairman, I would think that this is a matter that we should defer. This is a debate that we should not try to conclude here. The new technologies that are coming with new values are really new in our society. We should not try to rush and jump ahead of the people we are trying to lead. We should move along with them and when the moment comes and they see these things differently, then we could write in our constitution a Law of that kind. Right now, I feel if I am honest to the people that I represent, this is not something that they view with some of the sentiments that I have had here.

Mr. Chairman, although it is a very important question, I also agree with those who have said that we should go to Parliament and see how we can improve the Law that is here and make some provisions for certain very, very extreme cases. I would agree with that, and in fact I would suggest that as we go along in this debate, as we come to matters that are very specific but that we think are of priority, we should keep noting them and perhaps recommend to the next Parliament to look at them as issues of extreme priority.

Mr. Chairman, I certainly oppose this Amendment because the values of our people are that abortion is still abhorrent and the rights of the unborn child should also be protected. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, I think we have had a survey of the subject by various Delegates. Not all of us can speak on each and every proposition on the Floor. I now would like to suggest that we pronounce ourselves on the proposed Amendment as moved by Hon. Apollo Nsibambi and expounded by Hon. Kirenga namely, that we take the Amendment of Hon. Kezimbira but that add to it two legs. If that is carried then the Motion will be amended by these additions and then we would discuss the Motion as amended and also pronounce ourselves on it. So, as a preliminary requirement of our rules, I would like to put the Question on the Amendment as moved by Hon. Apollo Nsibambi.

(Question put and negatived)

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, the Amendment I wish to move is a reflection of what a number of Delegates have said regarding whether we should go into detail as to the circumstances to justify abortion. Mr. Chairman, we heard Dr. Mugenyi indicating to us what he understood by 'on medical grounds'. And to me it sounded extremely wide or too permissive depending on the Doctor's opinion and sympathy and what he thinks is useful life to this world. So, Mr. Chairman, I am moving that instead of specifying the grounds in this Article, we say that Parliament shall or may make a Law to this effect. The clause should read, "No person has the right to terminate the life of an unborn child except as may be authorised by Law". So, that we give Parliament opportunity to study as Hon. Byanyima was saying and specify circumstances under which abortion may be permitted. Mr. Chairman, I beg to move.

THE CHAIRMAN: Is that seconded?

MR. MULINDWA: Seconded.

THE CHAIRMAN: Let us first of all get the text of what we want to discuss clear. The preposition now is that the Motion as originally moved and seconded to amend the original one to say that, 'No person has the right to terminate the life of the an unborn child except as may be authorised by Law'. And then you have a full stop there and leave out the rest of that.

MR. ZZIWA: Thank you very much, Mr. Chairman. In view of the definition of a child, Mr. Chairman, that it is somebody below the age of 18, I would like to seek clarification, Mr. Chairman, whether an unborn child falls within that clarification. Secondly, it is because when we count years, we count them from the date of birth. Thank you very much, Mr. Chairman.

PROF. NABUDERE: Mr. Chairman, we are making, here a provision under the rights of children and yet we are talking about the rights of the unborn. I was wondering whether we should not have dealt with this matter under the general right to life. We could have inserted there something in the way that the other Honourable Delegate is proposing under Article 52. We could have added the (3) there because this is concerned with life in general. I do not know whether we can call the foetus to be under the right to life in general. If it is under rights in general then we will deal with it there rather than deal with it under the rights of children.

THE CHAIRMAN: Of course, that still raises a debatable situation whether the unborn foetus has a right to life as a person or we say, that it is an unborn child and therefore must be protected because childhood starts from conception until delivery. It is not very, very clear.

MR. SSEKWEYAMA: Mr. Chairman, abortion is a criminal act. As we speak and in as far as we have found out, we cannot exhaust the exceptions to allowing it. Mr. Chairman, I seek clarification whether an inclusion of a provision in the terms of what Prof. Hon. Nabudere has moved and therefore, leaving the rest of the exceptions to Parliament taking into consideration the changing situations would not provide enough safeguard for the unborn life. Because if we put an independent provision, then it means we have to detail and exhaust all the provisions. My understanding of the Law, whatever exceptions we would include here, would just serve as defence after the woman has aborted. She would then say, I did this because the pregnancy came as a result of rape or incest or whatever. So, I would rather that we take the advice of Hon. Nabudere, protect the unborn life under the general provision that protects life and then leave the rest to Parliament to amend the existing Law because in any case abortion as we speak now, is a criminal offence. Thank you, Mr. Chairman.

MR. KATUREEBE: Thank you, Mr. Chairman. I do not understand Prof. Nabudere to be suggesting anything from the principle proposed by Mr. Mulenga. He is concerned with where to place it. I think we can go ahead to discuss Hon. Mulenga's Amendment as a principle and then leave it as to where it will go. We can be advised on that by the Technical Committee. But we must have the principle first debated and passed or rejected. Now, if that is the case, then, Mr. Chairman, I would like to contribute on Hon. Mulenga's Amendment.

THE CHAIRMAN: I think instead of wasting more time determining where we should place it, let us now discuss the Amendment by Hon. Mulenga that, 'no person has the right to terminate the life of the unborn child except as may be authorised by Law'. And that would leave it to Parliament to determine the matter.

DR. NYEKO: Mr. Chairman, I would like to support the Motion moved by Hon. Mulenga. Hon. Delegates, abortion is a very contentious issue inter-

nationally, and as we have been told even earlier, we may not be able to exhaust the discussion on this topic in this Assembly. So, if we look at the Motion presented by Hon. Mulenga and if we pass this Motion, I see this Assembly will have killed two birds with one stone. We shall have not given permission to anybody to carry abortion and at the same time we shall have left the responsibility to Parliament to authorize any other lawful abortion. So, Hon. Delegates, I would request all of us to support this Motion and if I am given time I would request the Chairman to put the Question.

MR. KATUREEBE: Thank you, Mr. Chairman. I support the Proposal by Hon. Mulenga. Mr. Chairman, abortion is a very difficult subject. It raises very important issues: philosophical issues; legal issues and medical issues. As indeed even doctors are agreed as to when a foetus is a human child. Philosophically, at conception human life begins. Now, these are issues that we cannot sit here with the time available to us, with the knowledge we have, without the research that should go into it, debate and constitutionalise an important issue like abortion. These are matters that should be left to Parliament where people may sit for four weeks or even months where the public contributes on the matter that is as important as this. Therefore, the import of Hon. Mulenga's suggestion is that we put here that no one may terminate an unborn child's life except in accordance with the Law which will be determined by the representatives of the people in Parliament. I support the Motion.

THE CHAIRMAN: Hon. Delegates, there has been an Amendment moved because this amendment drastically alters the original by knocking off those exceptions. If we pass this one then we do not proceed with the one which has been moved. In fact it will have taken it over. Now the Question is that the Motion amending the original one by Hon. Mulenga as now it reads: *'No person has the right to terminate the life of an unborn child except as may authorised by Law'*.

(Question put and agreed to)

THE CHAIRMAN: This means that we have disposed off the original Amendment. As to where it will be placed whether in article 52 or it remains at 62, this will be determined by the Technical Committee without changing the text as we have approved. Thank you.

PROF. NABUDERE: I still think that the Technical Committee or whatever, should clarify whether we are talking of an unborn child because I do not think we can say that the foetus is an unborn child because it might turn up not to be born. What we are protecting is the essence of life in the womb and not the fact that the child will be born. It might turn out not to be born. So, I would like the formulation which accommodates the Motion but at the same time gives us a correct technical, original and subsequent amendments without some of us who are opposed to the original amendment having to make an input. Now to me, I happen to be lost in those technicalities.

THE CHAIRMAN: Any way the position for those of you who followed the procedure I think they went correctly and logically. Had we added the amendments proposed by Hon. Apollo Nsibambi we would have discussed the whole thing again. Because that was just adding two legs to the original. But what happened is that, the Motion has been substantially amended and carried out the basis of the amendment. Now unless they want me to put the question on the other one again.

AN HON. DELEGATE: No, Mr. Chairman, we want guidance.

THE CHAIRMAN: Do you want me to put the question on the original amendment?

AN HON. DELEGATE: Yes, we want to know what is happening.

THE CHAIRMAN: Okay, we carried the amendment, some Members feel that we should also vote on the original again. Now, let us put the question. The Motion as amended is the one we carried and the nature of the amendment was such that it more or less negated the previous one so that we do not have to waste time discussing it again. But if the Members want us *-(Interjection)-* want us to put the vote again, there is no problem. I will now put it to the vote. Those in favour say 'aye' to the contrary 'no'.

(Question put and Agreed to).

THE CHAIRMAN: The mere fact that the Member did not have a chance to contribute, would not take us backwards. For us we are proceeding. We have done 14; 15 was withdrawn; 16 was discussed and passed and we are now on 17.

MR. MASIKA: Thank you very much, Mr. Chairman. Mr. Chairman, I beg to move that the words by reason of religious or other beliefs appearing in line two Clause (3) of article 62 be deleted so that the Clause reads as follows: *'No child shall be deprived, by any person, of medical treatment, education, or any other social economic benefit'*.

THE CHAIRMAN: Is that seconded.

LT. COL. MAYOMBO: Seconded.

THE CHAIRMAN: Hon. Mayombo has seconded it. Could you speak to the Motion, please.

LT. MAYOMBO: Mr. Chairman, reading the clause in its original form, one gets the impression that a child can be deprived of those services by way of other reasons other than religious or other beliefs. It leaves a very big gap when you are deprived of those services, so long as it is not religious or other beliefs, it can be accepted. Mr. Chairman, I would like to talk about other forms that can lead to this deprivation. One, a child can be deprived of those services on political grounds. It can as well be tribal grounds; it can as well be disability; it can as well be the social status of the family; it can be colour or race as it used to be the case in South Africa under apartheid regime. It can be failure to adhere to certain cultures or practices like circumcision. Somebody would say since your mother was not circumcised or your father was not circumcised, then you do not have a right to get these services, we are punishing you on those grounds. Mr. Chairman, because of those reasons, I beg to move so that we clarify or we accommodate those gaps which would otherwise have come. Thank you very much, Mr. Chairman.

MR. MALINGA: Thank you, Mr. Chairman. I beg to oppose this amendment. I think the formulation here is to enable a person to receive treatment even if that religious community it does not believe in that kind of treatment. If it is thought it is necessary for that person to have that treatment - Hon. Colleagues, you will recall that sometime back there was trouble. - I do not know whether it was in Zambia or in South Africa where - I think it was in Jehovah's Witnesses, who were refusing I think blood transfusion, and the state had to come in forcefully to allow those who wanted - members of those who wanted - members of those who were involved in an accident to receive blood transfusion by their religious beliefs were not allowed. So lives were unnecessarily being

lost. I think this is what this formulation here seeks to achieve, it enables the medical authorities to do that which is necessary to save that life irrespective of the beliefs of the person concerned. There is nothing really - I think it is a very important provision to have in the law, and I will beg the Assembly to maintain it as it is. Thank you.

MR. OBIGA KANIA MARIO: Mr. Chairman, I beg to support the amendment for the simple reason that, even if the reason behind the present draft without the amendment is because of denial of treatment in some sects of certain religions as they exist today, you cannot be sure that in future the same interpretation will be applied. Because we have the current knowledge about these sects' members having been denied medical treatment on the religious ground. But in future it can be read just as the Movers have said. That provided you are denied medical treatment on other grounds than the religious ones, it will be acceptable. Yes, because it says, *'No child shall be deprived by any person of medical treatment, education, or any other source of economic benefit by reason of religious or other beliefs'*. That means provided you are deprived of those benefits not by reason of religious or other beliefs, it will be correct. And that will be negating the over all principle that no child should be deprived of those benefits. So, I would rather go with a general statement as correctly amended by Hon. Mazima. So, I support the amendment.

MR. BAGENA: I support the amendment very strongly because it is shorter than the one we have on the draft and it is even more comprehensive. These other circumstances under which religious or other beliefs are covered, are so few, and we stop at economic benefit while there you have everything. So, those who oppose it are already covered by the amendment by Hon. Mazima. Thank you, Mr. Chairman.

PROF. KABWEGYERE: Thank you, Mr. Chairman. I think there is a linguistic misunderstanding. I think if one reads it louder again, *'No child shall be deprived by any person of medical treatment, education, or any other social or economic benefit by reason of religious or other beliefs'*. The provision is very, very specific trying to address a problem in our society which seems to be growing where you have sects which believe that to go to school is against God. That to go to a Doctor is not necessarily that you will be cured, and so on and so

forth. And even to get power you can go through the beliefs and get people mesmerised into a frenzy. This is addressing that, that there are certain beliefs which must be really looked at seriously and they should not interfere with the basic rights, specifically, health and education and lastly social and economic benefit. So, this is specific, and I think by ending where it is being proposed, we shall be losing in the meaning that is supposed to be carried by the clause. And I think we will be failing to address a trend that seems to be becoming strong in our society. I therefore, oppose the amendment.

MR. TIGWEZIRE KASAIJA: Thank you, Mr. Chairman. I want to support the Motion as amended by Hon. Mazima. Because when you read the Motion, the last part of it seems to qualify people with disabilities which means it will be leaving out very many people. I say this because, I have seen many people, especially the disabled, being disadvantaged because people have beliefs that the disabled cannot do certain things, say for example, study like other people do. Therefore, they are shut out of certain benefits because of disabilities. Now, I think Hon. Mazima here stresses the point. If we are going to qualify disability by inserting the last part, then we are going to shut out other people. So, I beg to support the Motion as amended by Hon. Mazima.

DR. NAKYANZI: Thank you very much, Mr. Chairman. I beg to support the amendment on the following grounds. While the provision in the Draft Constitution differentiates specifically religious and other beliefs, it is narrowing the reasons on which one can stand to deny a child of some amenities. These include, in our circumstances, ethnicity and tribe which are not provided for in the original article in the Draft Constitution by adopting the amendment. It means it will be illegal for any one to deny a child of a right regardless of nationality, tribe and any other beliefs. So, it is wider, it includes religious beliefs and it also includes such things like tribe, politics or culture. Therefore, Mr. Chairman and fellow delegates, I ask you to support this amendment because it is more embracing and protects the children's rights better than the original one. Thank you.

MR. KWERONDA RUHEMBA: I would like to support the Motion but with a bit of an amendment and that amendment is to the effect that we remove the words "by any person" and then we stop at "benefit". That makes it even more broad because it

covers all persons and any institution that may want to prohibit a child from getting treatment, education or social economic benefits. I beg to move, Mr. Chairman.

THE CHAIRMAN: Now we go to a situation where Hon. Kweronda Ruhemba is saying that the text, as it is, should be amended by deleting the words "any person" so that it reads: *"No child shall be deprived of medical treatment, education or any other social or economic benefit"*.

MISS KALIKWANI: Thank you, Mr. Chairman. Mr. Chairman, I beg to support the Motion as has been put by both Hon. Mazima and then refined by Hon. Kweronda.

THE CHAIRMAN: No, let us first take Hon. Kweronda's because then we can go on to debate whether we should include the religious aspects and other beliefs.

DR. NAKYANZI: Okay, I support the refinement by Hon. Kweronda, more especially because other than just saying 'no child shall be deprived of...' it gives the responsibility to everybody, either person or institution, to make sure that our children are treated, are educated. Mr. Chairman, I beg to move in support of the Motion.

PROF. NABUDERE: Mr. Chairman, I think we should reflect a bit on what Hon. Hon. Kabwegyere said. It appears that the purpose of the Constitutional Commission was to provide, specifically, for this situation of religious discrimination. Now, if we remove it, as we are in fact doing, and even with the latest amendment, we are in fact now making this provision superfluous, why? Because there is no reason why children should specifically be mentioned in relation to those services. Those services are due to everyone whether men, women or children. So, I would rather say that, if you do not see the significance of what the Constitutional Commission recommended, then I think we should delete the whole thing. Because then, we should leave children's right to medical attention on the basis that everybody is entitled to these services and not children alone.

THE CHAIRMAN: But Hon. Nabudere you agree that there are two concepts. The one by Hon. Kweronda is seeking to widen the responsibility so that it is not just any person but, of

course, in law one can argue that a medical board could be also a legal person.

PROF. NABUDERE: Yes, it still leaves it relating to children.

MR. KUTESA: Mr. Chairman, I would first of all seek clarification from the Mover of the Motion now on the Floor, Hon. Kweronda Ruhemba. In the first instance, they are removing the words "by reason of religious or other benefits".

THE CHAIRMAN: No, we are not coming to that yet.

MR. KUTESA: He is proposing both, sir.

THE CHAIRMAN: Well, his second leg was only contributing in support, but I think his main thrust was knocking out the words "by any person".

MR. KUTESA: The clarification I want to seek, Mr. Chairman, is that it appears to me that if anybody deprives a child of medical treatment, education, or any other social or economic benefit, it means that if for example I had a child who was school going and I suddenly found myself unable to pay for him, that I have breached his constitutional right according to this new proposed amendment. That to me, seems to be really not the intention of whatever amendment we are talking about. I think what is presumed in this article is that, I have the money, I should be able to pay, but because of religious and other beliefs, I have refused to pay. - *(Applause)* - I deprived the child of continuing to go to school. I think it is very unwise for us to provide that a parent who fails through his own economic inability to pay school fees for a child or to take him to hospital, that, that person should be held for having breached a constitutional right of the child. But if some person has the capacity, has the money to take the child to school but because of a religious belief he has, he refuses, there I find sufficient ground for the state to say that, that kind of parent or person must take the child to school irrespective of his faith or other beliefs. But if we were to provide, Mr. Chairman, - we were the who last week who threw out free education. We said the state is unable to provide free education. We said the parent must contribute. If the state can fail how, about a simple peasant? Sometimes, a parent can fail not out of ill will or anything else, but because of physical and

economic inability. So, I thought what we are trying to outlaw here is for a man or woman with capacity just having an excuse of his religion or other beliefs failing to give a child medical treatment and/or any other social economic benefit. If the Movers can clarify to me whether they really intend to make it punitive to a parent who is unable by making this amendment, then I would like to contribute thereon. Thank you, Mr. Chairman.

MR. KWERONDA RUHEMBA: Mr. Chairman, I am sure people who wrote the original text were worried that there were institutions, some of which are religious and others which may prohibit a child from getting treatment or from getting education. But what we are trying to move here in this amendment is to say that nobody should stand in the way of this child getting education and medical treatment or in the way of this child getting social economic benefits. So, that is broad, and broad enough to stop anybody, institution, religious, governmental or non governmental organisation from stopping this kid from going to school or getting these benefits. And I think that is what we are after, Mr. Chairman.

THE CHAIRMAN: But I think as I did indicate casually, the word there could have meaning beyond the physical person.

MR. ZZIWA: Thank you very much, Mr. Chairman. I had an opportunity, Mr. Chairman, to discuss this article with my electorate, and I have the following instructions.

MR. MBABAZI: Thank you very much, Mr. Chairman. I wanted clarification restricting myself to the medical aspect. Because if I were to stop just at the word 'medical', the amendment reads as follows: "*No child shall be deprived of medical treatment.*" Now, there has been debate in both the legal and the medical circles on when to declare someone dead. Are you to look at the heart pulse or at the function of the brain? Mr. Chairman, when you look at -

MR. CHAIRMAN: Are you making a contribution or you are trying to get -

MR. AMAMA MBABAZI: I am asking a question for clarification. I only wish to give a background for him to understand what my problem is. Mr. Chairman, when you look at the modern equipment - state of the art equipment, it is possible for

someone who is brain dead to appear to continue to live by his heart beating with the help of that equipment. Now someone like a child in hospital - this debate incidently has been taking place in England and other places in the West - if someone is on such equipment and his heart is working, he is able to move his limbs and other parts of his body and yet medically he is brain dead. How does this affect that kind of treatment? Is this amendment saying therefore, that, the state or the hospital or the parent whoever is responsible is under obligation to keep this child on that equipment?

THE CHAIRMAN: I thought we had a definition of death in our penal code, and that is what we go by. Until we have reached a stage where the definition shifts from the pulse to the brain. But the point I was still pushing was, Hon. Kweronda Ruhemba sought to remove certain words: "by any person". It was seconded. But in the contributions that have come on the Floor, you can see two things: one, that it makes the thing look more nebulous than it should be. But more importantly, the definition as we know, the word 'person' does not mean human beings only, he was referring to institutions, medical and other wise. Do we have to go to that extent by having to remove these words. Because that really then puts the pin to the situation, is it a person, is it a body corporate and so on. If really that was to be the case, I was wondering whether Hon. Kweronda Ruhemba wants to continue pushing for this. Because if that was out of the way, then we can now contribute on the main import of this provision which seems to be from the lawyers that have contribute so far, that this is not aimed at mandating a person for his own sake to have to give these social benefits, education and otherwise to children but it is aimed at situations where because of beliefs - the other day Hon. Akure said he had to be taken to school by force because his parents had certain beliefs about education. I think this sort of thing this is supposed to be looking at the situation where the Jehovah's Witnesses for instance, and I hope I am not hurting anybody's feelings here, I understand did not accept blood transfusion because of other reasons. I think it is aiming at demanding that you must take your child to school willingly. I think this is the meaning of this provision.

MR. KWERONDA RUHEMBA: Mr. Chairman, I am not ready to withdraw this amendment because of a number of reasons. One of them is that, I am not convinced that this constitution has given a child a constitutional right to medical treatment, a

constitutional right to education and a constitutional right to social economic benefits. Even when we tried to talk about compulsory education the other day, it was thrown out. Now I want to go back to our population, a population which we are now saying should not even abort unwanted children. Now, what is the point of producing that child if you are not going to look after it? If you are not going to plan for this child? I want to broaden this article or rather this clause to protect that child. That, that child once born, he should be entitled to these benefits, and it should be his constitutional right. And if you produce, you as a parent and you cannot look after me, I should stand in court and challenge you as to why you drink the whole day and I cannot go to school. I should challenge you, why you are marrying the second and third wife and I am not going to school. I should challenge you why you are selling the land and I am not going to school. So, Mr. Chairman, I am not ready to withdraw this amendment because I do not see any other defence for the child.

THE CHAIRMAN: Hon. Kweronda Ruhemba while your intentions are very good, the position is that, what you are describing has already been catered for by other provisions.

MR. KWERONDA RUHEMBA: Can I be educated, Sir?

THE CHAIRMAN: The other day we passed a provision saying that the state and the parents have the responsibility towards the education of that child. We have Clause - *(Interruption)*-

MR. KWERONDA RUHEMBA: But it did not include, Mr. Chairman, the compulsory aspect.

THE CHAIRMAN: No, there was no attempt to make it compulsory, in fact that one was in two which we removed. So, you are bringing us back to something we rejected. In the original too which talks of education which shall be compulsory in Uganda was removed in favour of the amendment by Hon. Onegi Obel. If you look at clause (1) it is talking about the right of the children to know their parents and to be cared for by the parents, and those entitled to bring them up. All these are positive statements we have made. This one is specifically looking at certain situations where either parents because of their beliefs do not want to send girls to school, and the law is saying that, that is not good. This is what this one is trying to say. Or because of religious

beliefs you do not want to take certain treatment for a child and this one is trying to say that. *(Applause)* So now, let us I think agree to pronounce ourselves on Hon. Kweronda Ruhemba's amendment since he has declined to withdraw it so that we can go on to discuss the rest. Now let us put the question. Those in favour of Hon. Kweronda Ruhemba's amendment say aye, to the contrary no.

(Question put and agreed to.)

THE CHAIRMAN: Now we come back to the amendment as it was proposed that we delete the words and just end at the word and then delete the rest as moved by Hon. Mazima.

MR. ZZIWA: Thank you very much, Mr. Chairman. As I was saying, Mr. Chairman, I had a very, very big discussion on this clause with my electorate and they came out with a general remark that this clause should be deleted. The reason they were giving was that, the clause was giving too much power to the children at the expense of guidance from the parents, and they gave the example where the clause says 'or any other social or economic benefits'. They said this was too wide in that, a child could claim to go and do some gambling because this was an economic benefit to him, he could go - in the case a child is of a moslem parent - to the market and start selling pork because this is of social and economic benefit to him. And for the child of a Seventh Day Adventist could go and work on a Saturday despite the advise given by the parents that he should not do it. And for those reasons, Mr. Chairman, they said we should look at this clause very, very carefully, especially, when it crushes against the ethics and against the normal behaviors or normal manners that the parents do intend to bring up their children with.

I submit, Mr. Chairman, therefore, that I would like to make an amendment to have the phrase 'or any other social or economic benefits' deleted and have it read that, 'No child should be deprived by any person of medical treatment and education' and stop there without including the word "or any other social or economic benefit". Thank you very much, Mr. Chairman.

THE CHAIRMAN: That does not seem to have been seconded. Is it seconded? If it is seconded, let us dispose of it first by - Hon. Zziwa would like to.

MRS. ZZIWA MARGARET NANTONGO: Thank you very much, Mr. Chairman.

THE CHAIRMAN: No, sorry, I have not come to that point, yet. Hon. George Zziwa would like to propose an amendment which would strike out the words "*or any other social or economic benefit*" which in fact goes beyond the one of Hon. Mazima. And so we should dispose of it first. It received secondment and Hon. Zziwa Margaret Nantongo would like to speak in support of the amendment.

MRS. ZZIWA NANTONGO: Thank you very much, Mr. Chairman. If you really analyse medical treatment and education, these are basic primary services which a child at least should be basically entitled to. When you analyse the social and economic benefits, these are relative. They are actually in most cases determined by the parent and the economic environment under which the child is living. So, if we give the child this right, it is actually giving them too much power whereby it will be very, very difficult for some of these children to decide for themselves bearing in mind that they are still toddlers and not yet fully grown up in their decisions; and they may end up in some of these acts which may be conflicting with society and social set ups. So, Mr. Chairman, I think we should go ahead and narrow the framework a little bit more by deleting the last words and stop at education. Mr. Chairman, I beg to submit.

THE CHAIRMAN: But before we can, I think, waste more time on this, I think Members, should read the whole sentence again. It is saying that it is granting the right to education and the right to medical treatment because those are already catered for in the previous clauses which we have approved. This one is simply trying to protect children from religious or other beliefs that may prejudice their education, medical treatment and so on. *(Applause)* If that is the case and you just leave it at education, then you are repeating what we have already passed, the right to education and so on and so forth. I think let us - unless Hon. Zziwa wishes to insist, in which case of course, we have to go to the vote. But I think we are misunderstanding the whole thing.

MR. ZZIWA: Mr. Chairman, thank you very much once again. In that event, Mr. Chairman, let us delete, as suggested by some of my electorate, delete the whole clause, because it is not serving any purpose if education and medical treatment have

been provided somewhere else. Thank you very much, Mr. Chairman.

THE CHAIRMAN: It has not received secondment, so we cannot proceed with it. Now, the Hon. Member had more or less withdrawn his other amendment seeking to prejudice the entire clause by moving its deletion, but that has not received secondment. So, we cannot waste anymore time discussing that. Maybe I would like to ask Hon. Mayombo who seconded the other Motion to tell us how he understands that provision. Then we pronounce ourselves on that amendment.

LT. MAYOMBO: Thank you very much, Mr. Chairman. In view of your elaborate explanation and the discussion in the Assembly, I request the Hon. Mover to withdraw the Motion. Thank you. *(Applause)*

AN HON. DELEGATE: Mr. Chairman, in light of the debate and the information we have gathered, I would like to withdraw the Motion - *(Applause)* - because it specifically touches religious beliefs and nothing else. But then there could be another gap. I would like to request the Legal and Drafting Committee to look at the situation and if the need arises, then they can advise us. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Thank you for your cooperation. So, with the withdrawal of that amendment, and I think the House has given the okay through clapping, we do not have to pronounce ourselves on that. That proposed amendment has been disposed off, and therefore, article 62 (3) reads and remains as it was: "*No child shall be deprived by any person of medical treatment, education, or any other social economic benefit by reason of religious or other beliefs*".

The other amendment, still on the question of children, is on clause (4), and is by Hon. Loice Bwambale. She wants to delete and insert some words. Could Hon. Loice Bwambale please, move your amendment.

MRS. BWAMBALE: Thank you, Mr. Chairman. Mr. Chairman, in amendment 18, allow me to move that article 62, clause (4) be amended by just inserting a few words. I am saying a few words because here on the paper it has been written as socio-economic. I wish to assert that, that is a typing error. It

should be social and economic exploitation. Hence in the amendment to article 62, clause (4), page 25 we delete the words "*Economic Exploitation*", and insert "*social and economic exploitation*". I beg to move.

THE CHAIRMAN: Go ahead and give reasons in support of your Motion.

MRS. BWAMBALE: Thank you, Mr. Chairman, for allowing me to give my reasons. Mr. Chairman, I have read the clause very carefully and I wish to propose that it be amended to suit and dispel the fears I have about economic exploitation of children. Mr. Chairman, children are not exploited only in economic terms. Of recent, we have noted that children are kept in unlawful places or in houses by individuals, males or females, and they are kept and exploited socially. We know that children move from rural places to come and work in urban areas or towns, or to be on the streets. And then you find that they are being kept illegally or unlawfully, and some old men and old women are using them otherwise - sexually, Mr. Chairman, I have been informed.

But there are also other social things that are happening to the children, I do not have to elaborate very much on them. Mr. Chairman, as you read at the beginning of Clause, the Clause 4 stating that the '*Children... shall not be employed or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health, physical, mental, spiritual, moral or social development*'. I have noted these words '*social development*' that having it at the end, makes it weak. In my opinion, having it as it is, is not protective enough of the rights of the children socially which I wish to insert. Mr. Chairman, I beg to move.

MR. CHEBET MAIKUT: Mr. Chairman, thank you very much. Mr. Chairman, I rise to strongly support the Motion Moved by Hon. Loice Bwambale for only a simple reason which in my opinion I think we need not to labour to argue much. Because, Mr. Chairman, it will be recalled that for long and even up to now children, boys or girls, have always been subject of abuse. This one I think we need not really to labour much but, Mr. Chairman, you would recall that men in particular are in possession of what somebody used to term 'very dangerous gadgets'. And so, the female children have been the subject of abuse socially wherever the children have been kept

So, to me I think this provision is quite useful in that, it will cater for both the economic and the social aspect of the protection of the rights of the children. In short, Mr. Chairman, I strongly support the Motion, and urge all the Members to pass this one without, I think, much debate. Thank you very much.

MR. KOMAKEC: I seek clarification from the Mover of the Motion when she says, the 'social exploitation' is understood, while frankly I still do not see it. Why don't they be specific? What do they mean by social? Because I am having difficulty, Mr. Chairman.

MROBUA OTOA: Thank you, Mr. Chairman. Mr. Chairman, I was also seeking clarification because I do not know what social exploitation can mean in this context. I mean you may employ a child which is under age or whatever it is, that is economic exploitation. I want a clarification from Madam Bwambale what she exactly means by social exploitation.

MR. NYEKO: Point of clarification. Mr. Chairman, I am also seeking clarification from the Mover. She indicated that she is aware of the last two words '*Social Development*', could I seek clarification if she thinks of putting the social and economic up and then at the same time maintain the social development down. Thank you.

THE CHAIRMAN: I think that was a misconception. Because social development is for the benefit of the child, the other one was the mode of exploitation.

MISS. NABAFU: Thank you, Mr. Chairman. I am not seeking clarification but I want to probably go ahead of Hon. Bwambale and give a bit of clarification on this issue of social exploitation. Mr. Chairman, in our society and, in other parts of the World, we have come to observe that some people take up children in the name of being house girls or may be they think that those children are orphans or destitute and they would like to look after them as guardians. What happens is that, they look after them well in the eyes of the public. But behind the scene there is a lot of social exploitation these children are undergoing. For example, in some countries, it could even be here, that some of these children are exposed to pornography. And if it is discovered it is a very sad affair. Hon. Bwambale is very right to add '*social*

exploitation" here because some of these children are made to undergo phonographic acts with animals or with other human beings and photos are taken of them to be published for people who are interested in pornography. This is a true happening in the world and we would like it to be avoided in our society, if possible through this law.

Mr. Chairman, there are some people who say they have taken up children in orphanages but these children turn out to be labourers, and that is also economic exploitation. Besides, some people think for example, men will take up young girls say they are going to look after them as guardians. But we have come to discover that, once these children are through the education, and they have developed into adults, it will not take long before you know that these children are actually married to these men. So, these men were actually bringing these children to be their wives in the future. That is social exploitation, Mr. chairman.

Thirdly, I think that there are some cases in homes where a child is under the care of a step-parent, and these children have been misused. They have been denied education, or enough time in education, and other basic developments; and they have been subjected to domestic chores which are a hardship and they are socially bad and depriving for the children. With that, Mr. Chairman, I beg to strongly support Hon. Bwambale's amendment. Thank you.

THE CHAIRMAN: But you see what we are looking for is the real definition of the word 'social'. I think that is where some Members are having difficulties.

MR. MULINDWA: Thank you, Mr. Chairman. Mr. Chairman, when we look at these article or clauses, and if we want to amend them first of all, we should first analyse the target, the substance it was trying to address. In my view, this clause (4) is targeting the exploitation of labour. So when you look at it in full, we are trying to associate all those things that are harmful to the children as a result of exploiting their labour. And we have gone ahead to enumerate them 'health, physical, mental, spiritual, moral'. And if you go ahead and look at clause (5), that is why we are qualifying that, for the purpose of clause (4) the age limit is 15 years. So, I look at the proposed amendment as uncalled for. Because the target is to prevent exploitation of children's labour. Mr. Chairman, I would like Members to look at these

amendments and original proposals with the view of looking at the intention - what was the target and what is the substance? Otherwise we shall not move. And in that view, Mr. Chairman, I oppose the amendment. Thank you.

MR. OKWAKOL: Mr. Chairman, I support this amendment. The exploitation of the children socially and economically is self evident. I believe that the Mover of this amendment needs to have clarified that the sexual harassment of the children, I believe, is social exploitation she was talking about. And without having enumerated examples many of us in this Assembly I believe know all those instances where children because of their age have been exploited sexually. Mr. Chairman, as for the economic exploitation of the children, there is a law which caters for the minimum wage of servants. That is the house servants. Very often these children who are brought from the villages and are made house boys and house girls are under paid or not paid at all and they are made to work hours on end without adequate payments. I believe this is what Hon. Bwambale was meaning when she was talking of economic exploitation.

Be that as it may, Mr. Chairman, let us consider the cause of these children moving from the country side to the urban areas for exploitation. These are areas which we need to be addressed. Many people will realise that, because of the economic deprivation of the rural areas, those people or those of us who are educated frequently travel to the villages, and are often confronted with families and their relatives. So many parents say, that they have so many children and are unable to take care of them. Would you please, take these children and find job for them. So, let us try to find out the causes of these problems. Why is it that the children end up in the urban areas, in as many numbers as they are to be socially and economically exploited? I believe, Sir, that we have to address the issue of population control, and family planning. If our people in the rural areas end up producing more children than they can feed; more children than they can cloth, then we shall have this problem continuing. Maybe we have to address, - we have to revisit the issue of family planning and this might solve the problem. I thank you, Sir.

MR. SAKWA NANYWAKA: Thank you, Mr. Chairman. I am a sympathizer of the plight of children, but the clarification I am seeking, Mr. Chairman, is, in many areas including Uganda.

Whenever dignitaries public officers, Ministers, or Presidents are visiting an area, children are normally grilled into providing entertainment, singing songs and dancing before these people. If we include the word "social exploitation" I am getting worried whether we are not going to be in trouble. How are we going to handle this issue of using children to provide entertainment? I would like to be clarified whether this is not a form of social exploitation in itself, Mr. Chairman.

DR. WANDIRA KAZIBWE: Thank you, Mr. Chairman. I am going to try and put the word "social" in relation to children in its right perspective. I want to support Hon. Bwambale's amendment by explaining that the word "social" here as far as the exploitation is concerned, has to be looked at in the context of who is benefitting socially from exploiting these children. Mr. Chairman, in our society, people get many children because the more children you have, the higher your social rating. And because we are looking at the children having their rights, we have to look at it knowing the number of children you will have so that you can look after them. Thus, the inclusion of social exploitation of children will make people plan before they decide on how many children they will have in view of few resources they have to look after them. Otherwise there is even this feeling that when you ask a man or woman how many children they have, and they will tell you that here they do not count children. They equate children to the number of cattle a Munyankole has.

Mr. Chairman, I would also like the Hon. Members to look at social exploitation of children in view of the number of NGOs that are proliferating. People start programmes for looking after children not because they have children at heart, but because they want to be looked at in society as may be the mother Theresa of India. And they collect these children in a home, ask for assistance and they parade as protectors of children when in actual fact they are only heightening their social status. So, Mr. Chairman, anybody who will want to start an orphanage or any programme to look after children will have to think twice if we include the issue of social exploitation of children. Thank you very much, I wish to support Hon. Bwambale.

MR. PULKOL BWANGAMOE: Thank you, Mr. Chairman. I would like to speak in support of the proposed amendment by Hon. Loice Bwambale, in noting the very fact that man being a social being,

lives in society which society is governed by certain norms, customs, religious beliefs, political organizations and the rest of it. In the course of interaction within society, Mr. Chairman and Hon. delegates, and being brought up in society these children are vulnerable not only to economic exploitation, but also to other forms of exploitation which the social blanket tends to cover. And, I think Members would agree that children are normally exploited in society. I want to quote one example from my culture where girls in our society are continuously subordinated in favour of boys and this one I think acts to the moral detriment of social esteem of the girls.

Secondly, I would also want to quote one example which happened during the famine situation in Teso where a girl of 14 was forced to marry so that the dowry realised from the marriage could be used to buy food. This is socioeconomic exploitation of a child. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Now, Hon. Members, you have had a substantial survey of this. Should we continue debating it? The amendment is quite clear, to delete the words "economic exploitation" and insert in their stead the words "social and economic exploitation". That is all the amendment is all about. I will put the question.

(Question put and agreed to.)

THE CHAIRMAN: There is a further amendment to Article 62 (7) by a number of people: Hon. Tezira Jamwa, Hon. Elly Karuhanga, Hon. Fiona Eguny, Hon. Maliro, Hon. Matayo Kyaligonza, Hon. Loice Bwambale, Hon. Kirenga, Hon. Baguma Isoke, Hon. Mavenjina, Hon. Anifa Kawooya and Hon. Mazima. This is a Motion to amend clause 7 of article 62. I will give the Floor to Hon. Tezira Jamwa to move the amendment.

MRS. TEZIRA JAMWA (Women - Tororo): Thank you, Mr. Chairman. There is some slight change in the amendment. After serious consultations with the Legal and Drafting Committee and through discussions we have agreed on the new wording of Article 62, Clause 7. Instead of deleting the whole Clause 7, we amended it as follows and, Mr. Chairman, the corrected amendment has been already circulated. The corrected amendment reads "The State shall accord special protection to orphans and other vulnerable children." Mr. Chairman, we seek to delete the second and third line in

Clause 7 of Article 62, page 25, and substitute thereof the following clause: *'The State shall accord special protection to orphans and other vulnerable children'*.

THE CHAIRMAN: Members, no doubt know what the text is that they are trying to amend. Is that seconded?

AN HON. MEMBER: Seconded.

THE CHAIRMAN: Okay, would you like to give your reasons?

MRS. TEZIRA JAMWA: Now, Mr. Chairman, before I read out my reasons I want to define the word "vulnerable". To us the sponsors of this amendment "vulnerable children" include abandoned children, displaced children because of ravages of war; and who are sometimes crammed in camps which keep children affected by natural disasters like famine, earthquake, etc. Children affected and infected by the killer disease AIDS. Disabled children, assaulted and battered children. Mr. Chairman, the list is endless. We seek to discourage the institutionalisation of orphans and other vulnerable children under the guise of providing for their welfare. Mr. Chairman, most orphanages and homes have been mismanaged and used as income generating projects for whom the beneficiaries are not the children. Mr. Chairman, those institutions have also proved detrimental to the psychological development and well being of the child. Mr. Chairman, if children are confined in these institutions they are deprived of love, proper care and protection and often times, because they have been confined to these institutions for too long, these children also lose touch with their relatives and consequently are disinherited and lose their property to marauding relatives. They also develop withdrawal and fear to face the outside world when they come out of these institutions. There is also evidence that such children are viewed as tools of earning and production when they are confined in these special institutions.

Mr. Chairman, if there was any assistance at all for those children it could be channelled through family structures. At this juncture, Mr. Chairman, we therefore implore the State to encourage policies directed to communal support system to assist the orphans and other vulnerable children. Mr. Chairman, I beg to move the amendment and appeal to the Hon. Delegates to support this noble cause for the sake of our children. Thank you.

THE CHAIRMAN: The Motion is clear. Yes, Hon. Rukutana.

MR. MWESIGWA RUKUTANA (Bushenyi county): Thank you very much, Mr. Chairman. Though I agree with the principle behind the Motion I unfortunately oppose it because we should know that once we enact this Constitution, it becomes law and enforceable. Now, to say that every child should take the State to court to enforce these things is to say the impossible. It is so wide and as we have already said, like in free education, the State now cannot afford. We are a poor nation, we cannot afford these things. In principle we may want to do them but we should know that we cannot afford. So, in order to avoid a multiplicity of cases which actually will go against the State if we are to follow the Constitution and the law, the law should cater - the law should provide that Parliament at any stage can make laws to safeguard these interests as and when the State is ready to do that. So, Mr. Chairman, I am sorry to state that I find no harm in the Article as it is provided in the Draft Constitution. Let the law be the one to provide or empower Parliament as and when to keep on making laws to protect these interests. Thank you very much, Mr. Chairman.

MRS. JANET BAGARUKAYO (Ntungamo District): Mr. Chairman, I wish to register my opposition to the amendment of the Article. I feel that our problem now in Uganda is that the number of orphans that we have, we do not even have a solution to. And when you look at vulnerable children, there are very many categories of vulnerable children. So, Mr. Chairman, to avoid too many things coming into our Constitution which we are unable even to cater for, let us avoid this and have the Clause as it is. Thank you very much.

MR. MALIRO: (Mwenge North): Mr. Chairman, I am one of the cosponsors of this amendment and Mr. Chairman we had very great reasons why we moved this. The clause as it is in the Draft confines itself to the orphan children and, Mr. Chairman, not all orphans are needy and not all non-orphans are not needy. We had in mind destitute children like the children you see on the streets eating from the garbage. That group is not very big but they are really suffering and they are very destitute. If you went to town, Mr. Chairman, and you see a mad woman with two children, there is already one in Kampala here having twins - the woman is mad, she has twins. Now, according to this law which cares

for orphans these children are not orphans, therefore they are not covered anywhere. Now Mr. Chairman, these - *(Interruption)*-

THE CHAIRMAN: Hon. Maliro there is information on the Floor from the Member who knows the area very well.

CAPT. BABU: Information. Mr. Chairman, I would like us to handle this question of the destitute children and the street children very carefully. We have experts who work on this question every day. The problem, Mr. Chairman, is not the people on the streets or the street children, the problem has been institutions where we take them. I will give you an example, Mr. Chairman, that a lot of destitute people are taken to institutions some of the institutions we have broken down and before you get back to town the destitute people have got there before you. For the street children, Mr. Chairman, some of them are categorised. Some of them are actually sent out and exploited to beg in towns. Others have run away from home and others are actually kids who are orphans. The true orphans now belong to certain homes, the ones you see in town sometimes are with their parents standing on the side of the street and being sent to beg. Now, when you talk about this programme I would like to say that Kampala City Council, for example, has a complete program on this particular topic and they are trying their level best to get these children in institutions. What is missing is the size of the institutions where they can take them. Kampiringisa is dead, Naguru is having its problems and I think later on somebody who has been in the Ministry of Labour who is here could give us some technical information on this so that we can see the problems. Thank you very much.

THE CHAIRMAN: Hon. Maliro will you wind up your contribution before we come to the Hon. Member?

MR. MALIRO: Mr. Chairman, I thank Hon. Babu for that information but I think that is a policy which is being operational in Kampala City which is not necessarily working in all towns in Uganda and what we are saying is that, we are not saying that all children who are on the streets must be cared for, we are saying we care for the destitute and if you looked at the definition which we had, this was intended to include the children whose parents cannot be traced but whom you cannot confirm that they are orphans so that they are not covered anywhere. The policy in

Kampala is good but it is not operative in other places. In Fort Portal we have many. And I have seen them in other towns, even in Kampala there could be some who are not cared for.

Now, Mr. Chairman, why we are very serious about this point is that in the long run it will just be a matter of somebody who is just a kind person, a good samaritan, to pick them. But there is no where in the law where they are covered as destitute children. Here we are trying to cover orphans but some orphans belong to big families, rich families, and they can survive. Some orphans cannot survive; but there is a person who is not an orphan whose parents, if they exist, are so poor or where the children have been deserted the mothers, these single mothers, sometimes when they are deserted by the people who made them pregnant they also desert the children and disappear and the children remain on their own. So, Mr. Chairman, I think we should think about this carefully and find a solution for them. I support the Motion, Mr. Chairman.

MR. BWANIKA BBALE (Katikamu North): Thank you very much. Mr. Chairman, I rise to support the amendment as submitted by Hon. Tezira and her Colleagues. Mr. Chairman, I think the experience we have here and the reasons why we see those children on the street and many others suffering elsewhere is because the government has not come out firmly to attend to these problems of these children. It is therefore important when we are making this Constitution to include a clause which really commits the Government or the State to be responsible. For example, attempts have been made to get those children you see on the street, and may be resettle them but because the law is not strong enough they find their way back to the street. Therefore if we make a commitment in the Constitution I think the Parliament will be sitting down and putting a strong law which will cater for these children.

Mr. Chairman, let me say a little about the street children. Those street children you see many of them are not orphans, they are coming from homes. Others come from disturbed areas where the war took place especially Luwero and the Northern and Eastern part of the country. So they are a result of economic and political problems we have been having in this country. Therefore, if we are making a Constitution, we should address those areas which really make these children come to the street. The idea of building

institutions should not be considered at all because it is not a solution. Now, if you go to Naguru Remand Home we have got 300 rounded up children from the City and they are just crammed there in a small room. Some of them are suffering from scabies; there is no food and the government cannot attend to these one. The best solution, Mr. Chairman, which we can address ourselves to is the community involvement. Community involvement is the solution and it is in that respect that the NRC allowed the Vice Chairmen now to be secretaries for children affairs, just disregarding the institutions.

So, Mr. Chairman, I think I am in support of this amendment and I think the Delegates should really support it so that the Government takes a firm commitment to assist the orphans and other vulnerable children. Thank you very much.

MISS. LUBERENGA KABIRISI (Women Bushenyi): Thank you, Mr. Chairman. I seek clarification because I am a bit puzzled by the moved amendment. Much as I agree with the Movers that some people have abused these institutions, I would like them to clarify to me what they mean by special protection. Because in the area where I come from we have cases whereby you have children who are on their own because they have lost both parents due to AIDS. So, since they seem to be advocating for the banning of any form of institutionalisation and since we seem to be overwhelmed by these AIDS orphans, if the State does not provide, like the original article was proposing, if the State cannot provide these institutions to take care of these children, how are they proposing that we take care of them?

MRS. EGUNYU (Women Delegate - Kumi): Thank you, Mr. Chairman. Mr. Chairman, I am one of the sponsors of this Motion and we sought to provide for the State to assume responsibility for these children simply because leaving it as it is presently stated in Article 62 (7) that the state shall protect such children does not establish who the law is going to give such responsibility because even when the laws made by Parliament have to state what persons or authority takes responsibility or who in law has the obligation to care for these categories of children.

We looked at the position of most of these children. These are children who may not have parents. These are children whose relatives may have rejected or have failed to take care of them. So, we say that by

giving the State the responsibility then the State would give that special protection, for example, either by laws legislating either through policies or encouraging community support system instead of having these children institutionalised. And we looked at the data collected by the Child Laws Committee and found out that at least seventy homes are operated by NGOs but these homes have become so commercialised that they were relying on the plight of the children to advance - to earn the proprietors of such homes an income. And we found that most of these children were abused and in the long run they had to be resettled in the societies from which they came especially as they go towards adulthood because the law is such that you cannot keep a child in care above sixteen years of age. So, children above sixteen years of age have to be resettled but when it comes to the time for resettling them there are a number of problems. They have always developed the withdrawal syndrome. They cannot fit in the community because they have been withdrawn for so long. They have even been disinherited or their property has been appropriated by the relatives and you find it is very difficult for such children to fit into homes. So, we felt that we had to discourage the institutionalisation of children because it had failed to address their problems and it was time the State came up to take responsibility for such children. Thank you, Mr. Chairman.

MR. SSEBAANA KIZITO (Makindye Division East): Thank you very much, Mr. Chairman. Mr. Chairman, I am of the opinion that Constitutions are sacred documents; they are documents whose interpretation even requires special courts. Therefore, I think that in a Constitution like this what we should do is to make broad statements of legal policies and then the specific will be done by Parliament. That is why, Mr. Chairman, although I recognise that we have a problem on our hands in Uganda of destitute children, of children on the street of children who want special assistance, I recognise all these as a politician but I think that we should not make a Constitution which is too easy to break. Because if you put such a paragraph or a provision in the Constitution, it will be so easy for the State to break it because immediately the State is unable to look after these children, it is already breaking the Constitution. Therefore, I do not want to support this although I support the fact that Uganda as a country, as a society, we have got responsibility to look after our children because these are citizens of this country but I think we can legislate this somewhere else.

There is a body known as Parliament, in case some people did not know, which can legislate the details of such children and any other problems. I do not think that we are going to cure all our ills of society through this constitution making process. Therefore, I do not support to put that Article here although I would support having a legislation elsewhere in connection with this matter. Thank you, Mr. Chairman.

MR. KIRENGA (Mityana North): Thank you very much, Mr. Chairman. Mr. Chairman, although I am one of the sponsors, I would like to allay the fears of those who are opposed to this Motion by suggesting an amendment to the effect that the 'State shall progressively...' so that those who fear that the State cannot afford immediately will be satisfied when it is done in stages as and when it is able to do so.

MR. MED KAGGWA (Kawempe Division South): Thank you, Mr. Chairman. I would want to oppose this amendment and advise the sponsors on the following grounds. First of all, the Clause as it appears in the Constitution gives a wider latitude of taking care of what they want to take care of. If we go by their amendment, I think it will be too narrow. When we talk of the law here and in fact the way it is framed, it would assist Parliament. Parliament will have to make a law and give various situations but when you put it here in the Constitution you run a risk in that those not mentioned may not be taken care of and I do not think everything should be in the Constitution. More specifically, we should give Parliament the opportunity because society is changing. Secondly, these are days of liberalisation. We should accord opportunity to various institutions to do certain jobs rather than limiting everything to the State. So, on those grounds I would advise the sponsors of this to reconsider and leave the Clause as it is stipulated in the Draft Constitution. Thank you, Mr. Chairman.

DR. FABIUS BYARUHANGA (Kitagwenda county): Thank you, Mr. Chairman. I wish to suggest an amendment to the amendment which would read as: *"The law shall accord special Protection to orphans and other vulnerable children"*. Instead of the "State shall...", we have the "Law shall..."

THE CHAIRMAN: You see as it stands in the Draft, the emphasis is on the law according special

protection. The amendment moves it to the State. Now, Hon. Dr. Byaruhanga is suggesting an amendment that instead of the "State" it would be "The law shall accord special protection to orphans and other vulnerable children". In other words he just wants to delete the word "State" and insert the word "Law".

DR. BYARUHANGA: Yes, Mr. Chairman, because when we use the word "State" we bind the "State" and when we use the old Draft we narrow ourselves to orphans. Now, this one would be taking care of other vulnerable children who are not orphans and would not hold the State at ransom.

THE CHAIRMAN: Is that seconded? I can see a seconder. Okay, it is seconded. I think the honourable Member is saying that the text was too narrow; it was referring only to orphans. The amendment seeks to impose responsibility on the government. He is trying to be neutral by saying "Parliament shall pass laws which have special protection to children". It was seconded. Hon. Mateke, do you want to speak to that one or you had something else? We are now talking about Hon. Dr. Byaruhanga's amendment.

DR. MATEKE (Bufumbira South): Thank you, Mr. Chairman. I want to oppose it, Mr. Chairman, because I feel the State must commit itself to look after these orphans and street children. I do not imagine how you can take the law to court but you can always take the State to court. So on that basis I oppose it.

MR. WAMBEDE (Bungokho North): Thank you, Mr. Chairman. Mr. Chairman, I think I will oppose Dr. Byaruhanga's amendment of replacing the State with the Law. Mr. Chairman, there are many people be it children or grown ups who are completely helpless and I believe it should be the duty of the State to take care of these people. You may say that we have institutions that may cater for these categories of people but in most cases and to the best of my knowledge, I have discovered that the organisations or the institutions that are given the liberty to take care of these people, in the end abuse them. You have heard of fund raising in aid of street children, every other day, but nothing concrete has been done for them. Last year, we read of a Reverend Father in Luwero who had taken over children to cater for them in an orphanage but instead turned out to defile them. Sometime back there was a wrangle between

Reverend Fathers again, one claiming a group of Street children was belonging to him, the other one saying they belong to him too. Ask yourself why are they are grumbling over this? It is because they have turned them into bonanzas. They are instead exploiting them. So, I feel it is the duty of the State to come up and really put up provisions and take up responsibilities of caring for these people. Thank you, Mr. Chairman.

MR. MUSUMBA (Buzaaya County): Thank you very much, Mr. Chairman. Mr. Chairman, I want to support the Motion or the amendment as put forward by Hon. Dr. Byaruhanga. When the Constitution says "The Law shall accord special protection", Mr. Chairman, my understanding is that it is now the duty of Parliament to sit down and legislate or make special provisions in whatever law it makes to see how best the orphans and other vulnerable children shall be protected and shall be provided for. It would be too strong today if we sat here and said "The State shall accord this special protection" because the arguments that were on this Floor on Friday relating to education have in a way some merits with regard to the present situation - *(Interruption)*

CAPT. BABU: Mr. Chairman, I would like to give the honourable Member on the Floor information that the point of Parliament he is making is so important that people should realise as you ask the State to become a welfare state you must at the same time know that you are sentencing us to paying higher taxes. I would like us to be very careful when we are creating a welfare State, we must at the same time know that when this welfare State takes root, we shall pay higher taxes and this is a very important point that whenever we ask for this we must be ready to pay for it. Whilst, I accept the welfare state I accept that we can go ahead and put it in the Constitution but when it comes to paying tax please do not refuse. Thank you very much.

MR. MUSUMBA: Thank you very much, Mr. Chairman. Mr. Chairman, I thank the Hon. Babu for that contribution and I wish to add that we are not desirous of creating a welfare state in Uganda. All we are saying is let us give Parliament a latitude to determine, depending on the social and economic circumstances obtaining in the country at any material time, what is best and what is practicable for these vulnerable members of our society. Thank you very much, Mr. Chairman.

MRS. SEBAGEREKA (Women - Mukono): Thank you very much, Mr. Chairman. While I support the amendment that the State shall accord special protection to orphans and other vulnerable children, I would like to - *(Interruption)*

THE CHAIRMAN: No, what we are debating now is an amendment by Hon. Dr. Byaruhanga.

MRS. SEBAGEREKA: Well, that is what I am going on to say. I support Hon. Byaruhanga's amendment that the law should protect the orphans and vulnerable children and needy children but the State shouldn't. All the children belong to the State. The children by the virtue of being born here they are State children whether needy, whether orphans whether vulnerable but the law should accord special protection to the orphans, to the vulnerable children and to the needy children. I strongly object to orphans being up-rooted from their own environment and taken to institutions. I have visited these institutions. I have been in touch with these institutions and there are so many atrocities and inhuman practices being done to the children in those institutions. I would like the State or the Government to put in place a machinery that wherever those orphans are or those vulnerable children are, they should be monitored so that those children are granted or are given proper protection, proper love and care. And I feel, strongly, that they should be in their own environment, in their own homes other than them being up-rooted and taken away and they lose touch with reality. I thank you, Mr. Chairman.

MR. KAVUMA (Kyadondo South): Thank you, Mr. Chairman. I support the amendment moved by Hon. Dr. Byaruhanga because, Sir, I think experience has shown us that when you heap too many responsibilities to the State, the State becomes the most ineffective and inefficient machinery of running the affairs or whatever you allocate to it. I prefer the format of leaving it to Parliament because then we are saying at any particular given moment Parliament shall be in a position to determine who should take this responsibility. It can even apportion it between the State and NGOs.

We are in a period of liberalisation, Mr. Chairman. I do not want this Assembly to pass provisions which are contrary to that accepted principle, not only locally here but also internationally. I think we are assuming too much that our State can come and take all these responsibilities and we are really going to be

disappointed when it cannot actually perform. With those reasons, Sir, I beg to support the amendment by Hon. Dr. Byaruhanga and to request Hon. Members to see the good sense in being flexible in what we do in this Constitution. Because if we left it as it is, even when the State comes down to Parliament with a legislation, that piece of legislation is going to be confined to what is in the Constitution. We shall have tied the hands of the legislators not to depart from apportioning responsibility to the State. I think it is a restrictive provision which we should not allow to pass in a document called the Constitution. I thank you, Sir.

MR. KAIJA (Kibanda County): I do strongly support the amendment where a law is provided to take a safeguard for these orphans and vulnerable children. I feel we have too many problems involved in maintaining orphans and vulnerable children when a State is committed. And therefore, I do strongly support that a law be put in place by Parliament that shall safeguard the situation. It is really alarming when you are going through Kampala to find a lot of African children who are really citizens lying on the floors urinating on the floor. This is terrible. So, I feel people who are lacking shelter, clothing, food, be provided for somewhere, somehow.

Monitoring teams should be put in place throughout the country so as to monitor what is going on. Some of these people who eat from dust bins, are really going to, sort of, contaminate our society in a way that these people are becoming thieves. At night you cannot move. So, in a way that is a terrible contamination or pollution. Thank you very much.

DR. ODUR (Dokolo County): Thank you very much, Mr. Chairman. Mr. Chairman, I have read this clause again and again and I think we are departing from what the Odoki Commission very properly identified. That we have too many orphans in this country and they have sought to find a solution as to how we can go about it. And it is important, first of all, to know or to acknowledge that there are institutions, institutions like UWESO. These should be encouraged to handle the problem of orphans. Then secondly, we know that actually some orphans do not have homes so when you say that orphans should go home, they should be cared for by the society, this is going to be very difficult. I therefore, Mr. Chairman, would not encourage that we adopt any kind of amendment. I would rather encourage that we maintain the original text as it was recommended by the Odoki Commission. Thank you very much.

THE CHAIRMAN: Let us have one speaker. Let us hear Hon. Pulkol who has got some special knowledge on this subject.

MR. PULKOL (Matheniko County): Thank you, Mr. Chairman. I would like to oppose the amendment moved by Hon. Dr. Byaruhanga. One, to limit it only to law is really so restrictive because there are other ways in which the State can accord special protection to children who are orphans and those who are vulnerable, for example, even through fiscal policies or even creating an enabling policy environment or encouraging other non-governmental organisations or other institutions of government to put action or programme to support these children, not only a law. It goes beyond law. Besides, governments all over the world, in 1990 committed themselves, the Heads of State in New York committed themselves to making national programmes of action to support these children and practical measures to strengthen partnership between governments, donors, NGOs, communities and so forth and put concrete programmes not only laws per se.

So, the way the amendment is being proposed as I am one of the sponsors is flexible enough to allow a Parliament at any given time to define what they think special protection will be. It could be in a form of passing a law, could be in form of action programme, it could be in any other form but also the Odoki Commission draft limits the protection only to orphans. And that is why the proposal that we are bringing forward is that the State shall accord special protection. That special protection will be left to the Government of the day, the Parliament of the day to define at that given time is going to be, going to constitute. So, I think Members should not just fear saying they will be committing the State. Even for example the government will say we have passed already a law to this. For us as a government we have accorded special protection to these children. It could be enough but it could also go ahead to putting this within the national development plan, prioritisation within the budgeting processes and so forth or creating that kind of enabling environment.

To commit these children to whom it may concern is really the disaster that has befallen Uganda for many years. That, to whom it may concern - but who is concerned if the State will not be concerned? So, I think it is important that we take this as, "the State shall accord special protection to orphans and other vulnerable children". It is an improvement of what is already in the Draft and it is flexible enough to allow that kind of interpretation.

THE CHAIRMAN: You have made your point. Now, I think we have had a wide ranging debate on this one. If we went on we could go on and on. I would suggest that we pronounce ourselves on this. We have an amendment which was moved by Hon. Tezira, Jamwa and many others. Then there is amendment of that Motion on the Floor by Hon. Dr. Byaruhanga. The original amendment sought to recast Clause 7 in the term that, 'The State shall accord special protection to orphans and other vulnerable children'. The original provision in the text was that, *'The Law shall accord special protection to orphans and encourage the establishment of special institutions to provide for the welfare, upbringing and education of the orphans'*. Now, this one seeks to forget all about the institutions and also forget all about the law but putting the responsibility on State to do so. Hon. Dr. Byaruhanga is seeking more or less to adopt the amendment by Hon. Tezira, Jamwa and others but shifts the responsibility from the State and leaves it to Parliament. This is what it means. What it means is that Parliament shall pass laws that shall accord special protection to orphans. In other words a shortened form, would have been the Parliament having the powers to make the laws. That being so, we shall pronounce ourselves first on the amendment by Hon. Dr. Byaruhanga. If that carried there is very little we can do on the original Motion because it will be carrying the original Motion except for the word "State" being replaced by the word "Law". Are we all together? - *(Interjection)* - No, no. If we allow one how about the others? Let us at this juncture really pronounce ourselves on Hon. Dr. Byaruhanga's amendment. I will put the question.

(Question put and agreed to).

THE CHAIRMAN: No, I have already ruled. If you want to challenge you stand up. If fifty-one of you challenge my ruling, that is what the law says, you stand up. Fifty one and above. The ayes had it.

Now, the position being that Hon. Dr. Byaruhanga's Motion was substantially the same as the amendment except for the word "State", if we so desire we can now pronounce ourselves on the Motion. Shall I put the question? Now, I will put the question.

(Question put and agreed to).

THE CHAIRMAN: At this stage Hon. Delegates we have come to the amendments to that text as they

appear on the circulated sheet. There was only, apparently there is a proposed amendment which was not seen by the Legal and Drafting Committee, it was from a group of Members headed by Hon. Winnie Byanyima. We shall have to get a reaction from the Legal and the Drafting Committee. It is supposed to be an addition of another clause to say that every child, regardless of sex, shall have a right to a share of the deceased parents property. Let me hear from the Chairman of the Legal and Drafting Committee whether this came to them or it did not.

MR. BEN WACHA: Mr. Chairman, I am sorry we did not see the proposed amendment and we had no chance of discussing it. - *(Interjection)* -. Sorry, Sir, we did not see this amendment and we did not discuss it.

MR. BABU (Kampala Central): Mr. Chairman, that amendment has not been circulated to some of us and, secondly, we did request here very strongly, and we implored all Hon. Members that all amendments should go to our Legal and Drafting Committee so that they can make our work easier. We are now going back where we started to start debating whether these amendments should to the Legal and Drafting Committee and I would like to move, Mr. Chairman, that this amendment be checkered or we request the owners to withdraw it if it has already been by-passed. Thank you very much.

THE CHAIRMAN: Hon. Byanyima what have you to say to that because I think - *(Interjection)*.

MISS. BYANYIMA (Mbarara Municipality): Thank you, Mr. Chairman. I beg the indulgence of the House on this matter. Mr. Chairman, this particular amendment came out of a meeting which we had between several male Delegates and Women Delegates. And the background to moving this amendment was that we recognised that property is very fundamental and basic. The protection of private property was something that we feel is very important and that it should be at the attention of this House in writing the Constitution. And we strongly felt that property is acquired in two ways, it is inherited or it is acquired through work. We felt that in fact very many children are denied that right to inherit property and it would be a great loss when we consider the article on children and fail to protect the private property of those children whether they be boys or girls, whether they be born in a marriage or outside the marriage but that the right to the private property

of children should be protected by this Constitution and if we failed we would really be failing in our task.

So, I beg the indulgence of this House that although the Legal and Drafting Committee have not seen it, that in fact this House is the one mandated to write the Constitution and that the Legal and Drafting can also consider it with us. It was not our intention to hide it from them but we happen to have met a day after the Legal and Drafting Committee had met and came up with this amendment. Since it is very short and it is just a single sentence, Mr. Chairman, we could read it out and you consider it. I thank you, Mr. Chairman.

THE CHAIRMAN: No, I do not think it is the length really which is at stake here, it is the principle. But I think, of course, the House has a right to grant special permission, if the House so wishes.

Hon. Karusoke are you suggesting something? No, we are on the preliminary stage, we have not even considered whether it should be moved as a substantive Motion.

MR. KARUSOKE (Ntoroko County): Mr. Chairman, Sir, I was among those who met on Thursday to discuss this matter and to decide and recommend that it be brought here as an amendment *-(Interruption)-*.

THE CHAIRMAN: But the Committee has met several times since.

MR. KARUSOKE: But then, Mr. Chairman, I am also aware that since the time we met, the Legal and Drafting Committee has been meeting and this matter should have been brought to the Committee. I therefore go with the rest of the Members that this matter still goes to the Committee before it goes to the plenary.

THE CHAIRMAN: Anyway let us put it this way. I think we shall waste a lot of time. The Legal and Drafting Committee is still continuing, we may pronounce ourselves on Article 62 but that does not close it for ever. Should the matter come up, as a very important matter, I am sure this House can revisit that particular provision but it would be good if we hear, the advice of the Legal and Drafting Committee because it raises many other issues.

Does a parent who transfer these property before he dies have to take into account the provisions of this?

You see, it is not as simple as that. On the face of it, it may appear quite nice but in terms of law, the implementation of it could a lot of difficulties. So, I would rather, the legal and Drafting Committee had a look at it and if it comes as a matter that must come then we shall revisit that Article and re-open it.

MISS BYANYIMA (Mbarara Municipality): Thank you, Mr. Chairman. I do accept your advice if we could stand over Article 62 and continue while the Legal and Drafting Committee consider that amendment, I am quite willing to go along with the advice. Thank you, Mr. Chairman.

THE CHAIRMAN: You see we have taken a long time on this Article, nearly two days really and we have come to the conclusion of Article 62 with some amendments. I was proposing that we pronounce ourselves on it to stand part of the Draft Constitution. If the question arises that we must re-visit it, we can do so at the reconsideration stage but the issues I am trying to raise are these, for instance, where a man and his wife have, may be, just one house which is held under a joint tenancy, on the death of one it automatically transmits to the other. What is there to be transferred as property. These are issues which have to be looked into. It is not as simple as that.

So, I would suggest that we proceed to pronounce ourselves on this one but also ask the Legal and Drafting Committee to come back with a report while we proceed. In fact, there are several articles we have said we shall revisit when they come up, if it is necessary then at consideration stage. It may even be found that it is not necessary to put it here, may be it is better off being put as an obligation on parents elsewhere other than being put as a right to children who cannot enforce it because of other factors that I have just mentioned, a few of them. So, I would rather we did it that way. I do not see any serious objection to my proposition. Shall I now put the question. I put the question.

(Question put and agreed to).

THE CHAIRMAN: So now, article 62 stands part of the Draft Constitution subject to being re-opened if the circumstances so dictate. Having successfully handled the children's interests, I think I would suggest that we break now for lunch and resume at 2.30 p.m. We adjourn until 2.30 p.m. Thank you.

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

THE CHAIRMAN: Let us call the meeting to order. Now, Hon. Delegates, this afternoon we disposed of and adopted Article 62 to stand part of the Draft Constitution and it so stands but you do recollect that the Deputy Chairman on the Legal and Drafting Committee did suggest that on completing 62, we should revisit Article 58 Clause (10) which were referred by this House to the Legal and Drafting Committee for redrafting, both in terms of language but also in concept.

There was a fear expressed about double jeopardy and the question was whether the provisions as they stood sought to cure the problem or were not properly framed or they were inadequate. Now, I would like to give the Floor again to the Chairman or Deputy Chairman of the Legal and Drafting Committee to remind us of what went on in the committee, then we dispose of that before we go on to look at the subsequent articles namely; articles 63 and so on where Amendments are still continuing on the basis of the amending sheets that were distributed last week. I will give the Floor to the Deputy Chairman of the Legal and Drafting Committee.

MR. WACHA: Mr. Chairman, thank you very much. Mr. Chairman, as I reported this morning, this matter was referred to our committee for redrafting and seeking ways of reducing the possibility of the existence of double jeopardy in respect to 58(9) and 58(10). Now, we looked at it and tried to reduce Article 59(10) specifically to provide for disciplinary action against members of the Armed Forces. However, where we presented this matter to the sponsors of the Amendment, they still thought it did not go far enough, and now they have come with an Amendment deleting Article 58(10).

Mr. Chairman, I think it is proper that I should also report to this House that the matter has had opinions expressed by the Solicitor General and according to the Solicitor General, he feels that the matter should be deleted on the grounds that this would give the Military Tribunals confidence to operate properly as a court and that if it is necessary, the Military Tribunals and the ordinary courts could be linked by law and not by the Constitution by way of appeals going from the military court to the ordinary courts.

That said, Mr. Chairman, I would want to remind Members that these types of articles, this type of provisions occur or have occurred in all our previous constitutions. Members will recollect that in 1967,

there is a provision under Article 15, Clause 12(c) which provides for this, and under the 1962 Constitution, there is a similar provision under Article 24, Clause 12 (d). Now, removal as advised could possibly remove the prospects of double jeopardy but according to our committee, would leave hanging what could happen in respect to disciplinary action which may be needed in respect to members of the disciplined forces. Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Hon. Ben Wacha. The point, if I may attempt to give a bit of guidance, is that you must first read Clause 9 and Clause 9 is saying that what they call double jeopardy, you should not be brought back into court and be retried on matters over which you have been tried and have neither been acquitted or you have been convicted of that offence. So, that, really in summary, is protecting a person who has gone through the ordeal of a trial not to come back on the same facts or circumstances to be subjected to a further trial. But (10) is saying that that does not stop a soldier or a policeman or a prisons officer, if we put in the real things we are looking at really, being tried even if he had been punished in accordance with their own internal disciplinary procedures. That is what (10) is saying. It does not shield a soldier to be tried again on the same facts and circumstances by a civilian court, even if he has been punished by the regime he serves either military or Police, except that when deciding on the nature or the quantum of the sentence or punishment, you take into account the punishment he has served or the sentence he had served under the disciplinary procedures. That is what (10) is saying.

Now, there was an attempt to put it the other way round that even if you have served under a civilian court judgement, if you come back and you are a soldier, nothing stops them demoting you or dismissing you from the force. I think that some people were looking at that from the other side. It would appear there has been no agreement in the Legal and Drafting Committee and the sponsors of this are saying, delete the whole thing, leave (9) as it is. Now, the question arises, if you leave (9) alone, does it prohibit any inter-relations between civilian courts and disciplined forces tribunals which may carry out punishment in relation to conduct or circumstances that warrant, or does it leave open for Parliament to pass laws to enable a situation where trials can still take place or punishment can be imposed, be it by the disciplined forces on their members who have already been convicted of an offence under civilian

courts, or the other way round where they punish in their own disciplinary manner and then still you are taken to a civil court and found guilty and either imprisoned but only taking into account the fact that you have already suffered some punishment?

That, I do not know whether I am being clear, but that is the import of these two. So, those are the contending interests really, and I am not yet sure whether we are at the stage of moving the Motion or some Members would like to make observations on the preliminaries before we go to the point of moving the Motion by those who would like to sponsor it. Essentially, on the points that have been raised in relation to the policy really - the question of policy, whether leaving in (9) would be adequate to provide a situation where the two can work together to set up a machinery. For instance, maybe subjecting one to be an appellant arrangement to the next.

LT. MAYOMBO (NRA Delegate): Thank you very much, Mr. Chairman. What I was saying is really - I tried to consult both legal circles and military circles, and Mr. Chairman, we came to a conclusion that there is double jeopardy, and two, it is unnecessary to have double jeopardy, why? Because once a court or any arresting authority is satisfied that in the commission of the offence provided for under the Penal Code, a member of the disciplined force also committed a service offence. In that matter, he should be handled with tribunals for the general Court Martial, Mr. Chairman. So, I am saying that it is an unfair provision, it is an unnecessary provision, it creates unnecessary complexities and, Mr. Chairman, I think it is redundant.

MR. ZZIWA (Kawempe Division North): Thank you very much, Mr. Chairman. Mr. Chairman, I am not really convinced why this Clause should be deleted, because what it says is that when giving the punishment under (10) they will take into account what sentence somebody has done in Clause (9), and for that reason, I am not at all convinced that this provision has to go. This question of taking into account what has been imposed on the culprit in Clause (9) clearly shows that the two courts, the civil court and the military court or whatever it is, have actually got a kind of liaison, and for that reason, Mr. Chairman, I think we should retain Clause (10). Thank you very much.

MR. DIDI (Moyo West County): Thank you, Mr. Chairman. I would like to support the previous

speaker. When you consider regulations and rules governing certain bodies - I will give an example where bankruptcy and certain types of offenses disqualify people from even being considered for certain offices. I think it is only fair that certain other sectors where one wants to serve, if in service he has committed a certain crimes, the additional disciplinary measures might require, for example, let him be removed. I assume that where certain offenses like, you know, moral turpitude disqualifies somebody from qualifying. If during the service he came to be convicted of such an offence, it is arguable that he has been disqualified.

Secondly, if it is a question of paraphrasing, I think what this rule is trying to provide is that where somebody who is, for example, a members of the Armed Forces, has committed certain offenses for which he should be tried, that should not be considered as double jeopardy. Thank you.

THE CHAIRMAN: Now, I think from the little that I have got from sampling the field, there is sufficient argument for and against. Now, I will ask Hon. Mayombo to move formally the Motion so that we debate the Motion now. This was just to see whether we should not by acclamation proceed, but it would appear not to be the case. Hon. Mayombo.

LT. MAYOMBO (NRA Delegate): Thank you very much, Mr. Chairman. I beg to move through you, Mr. Chairman, and this Hon. Assembly, a Motion seeking to delete the provisions of Article 58 Clause (10) I beg to move.

AN HON. DELEGATE: Seconded.

THE CHAIRMAN: Now, could you give your reasons.

LT. MAYOMBO: Mr. Chairman, as I once appeared before this Assembly and said that it is a long held principle of criminal law that once a person is charged, tried and sentenced and serves his sentence by a court of competent jurisdiction, Mr. Chairman, that person should not once again be arrested and charged for a similar offence or for the same offence.

I am moving, Mr. Chairman, that this provision provides that it is possible for Lt. Mayombo to be charged, tried and convicted by a Court Martial on behalf of the Republic of Uganda, and after serving

that sentence, he is re-arrested and charged and convicted of the same offence. I find that as an injustice, Mr. Chairman, and I am saying that once an arresting authority is satisfied that in the commission of the criminal offence under the Penal Code, Lt. Mayombo has also committed a service offence, then that file should be handed over either to the military - we have a competent office in the Army, Mr. Chairman, which can handle both offenses - or the High Court should also charge him of two offenses, a service offence and a criminal offence and the matter is disposed of once and for all.

I beg to say, Mr. Chairman, that we are interested in discipline. We have built this Army without double jeopardy, we can discipline these soldiers and at the same time guard their human rights. I am saying, Mr. Chairman, when Uganda acquired justice, the NRA took occasion and brought justice in this country. They have now sent me to request you, Mr. Chairman, for nothing in this Hon. Assembly, but justice. I beg to move.

BRIG. KYALIGONZA (Buliaguzi County): Thank you, Mr. Chairman. I support the Motion on a simple ground that once sentence is passed in whatever form, it has its own impact on the culprit. Mr. Chairman, some while ago, there were some situations where the attitudes between a disciplined force and civil authority were a bit negative. Now that situations have changed, and I believe they are likely to continue changing and improving, there is no reason why we should doubt the competence of any trial courts at whatever stage. Mr. Chairman, I am completely perturbed by some Members of this Assembly who are proposing that retrying a person who has already been convicted is not double jeopardy. It is a bit unfortunate *-(Interruption)*.

THE CHAIRMAN: I do not think they are saying so.

BRIG. KYALIGONZA: At least impressions have been shown that they are likely to say so. Okay, I withdraw that one, Mr. Chairman, but what I am trying to say is that we are forgetting that the disciplines and the codes of the disciplined forces are very clear that when a person is convicted, he is not likely to go back to the same service, he is automatically dismissed. That law is there, and therefore, when a person is suffering the sentence, the dismissal, and at the same time after that he goes back to be retried, it is a bit unfortunate. Therefore, I

support that once a person - we delete Clause (10) as proposed by Hon. Mayombo. Thank you.

MR. KYEMBA (Jinja Municipality West): Thank you, Mr. Chairman. Mr. Chairman, good neighbourliness notwithstanding, I would like to express my reservations on the deletion being proposed of this particular section. Mr. Chairman, we tried to maintain the highest standard of discipline for our security forces, our experiences have only been too clear over the period we are discussing. We should not be loud in complacency by the present situation which seem to be different from what the people of this country have been going through. We need to make sure - Mr. Chairman, my neighbour is moving away - we need to maintain the highest standard of discipline for our security forces, and I would like when Hon. Mayombo is responding, to tell me for example, what he would do with a simple case that I would like to give. We know for certain that for somebody to carry arms illegally from the armoury, it would necessitate disciplinary action depending on the way the arms are taken out. But to find a soldier carrying weapons outside, he may not be charged or arrested by the security forces outside. What would be the case of such an offence, with regard to the member of security forces, he may not have committed a crime, but he may have the weapon available for possible commission of a crime, illegally.

THE CHAIRMAN: Yes, he would like to inform you straight away.

LT. MAYOMBO: Point of information. I would like to inform Hon. Kyemba that we have a Statute which was passed by Parliament, "*The National Resistance Army Statute No. 3 of 1992*". Among the many service offenses is carrying weapons without permission. Illegal possession of weapons is an offence for which you can be charged and tried with established courts in the Army. Thank you.

MR. KITARIKO: Point of clarification. Thank you, Mr. Chairman. I would like to seek clarification from Hon. Mayombo. Suppose a soldier has deserted the barracks and went to some place, commits a crime, and he is even tried by courts of law, he is sentenced to five years of imprisonment and after serving the sentence Hon. Mayombo and others would like to know why he deserted the Army. That double jeopardy will still continue. How do you want to solve this problem?

THE CHAIRMAN: Let us get Hon. Mayombo to explain that or if he does not mind we could get Maj. Gen. Tinyefunza to clarify to that one.

MAJ. GEN. TINYEFUZA: Thank you, Mr. Chairman. Mr. Chairman, maybe before I respond to what Hon. Kitariko's clarification was seeking, I would like to inform the House, Mr. Chairman, that the problem of double jeopardy in respect to this specific provision arises from the problem that the current law as it stands now makes all criminal offenses in Uganda committed here service offenses. Now, this is a very serious matter. So, it is not only what you may envisage here as service offenses; carrying of firearms or maybe abusing an officer which should be treated as a service offence, but instead, our law has made all criminal offenses including murder, rape anything a service offence. So, it means if a soldier now is convicted for committing murder and taken to Luzira, when he comes back he will be charged again for murder, because under our current law, murder is also a service offence. Now, this is a very serious matter. So, since we have not amended our law to separate what is a criminal offence, we think this is going to work, not in the interests of our soldiers but to their detriment. So, Mr. Chairman, I wanted to clarify this before I go on as a very serious matter.

THE CHAIRMAN: Yes, but then what happens in the case Hon. Kitariko pointed out?

MAJ. GEN. TINYEFUZA: Mr. Chairman, I can go to that.

THE CHAIRMAN: What happens to this soldier when he finishes his five years at Luzira?

MAJ. GEN. TINYEFUZA: Can you clarify your question more clearly, Mr. Chairman, so that I respond to that one?

MR. KITARIKO: Thank you very much, Mr. Chairman. I was saying a soldier deserts the barracks in Mbarara and he runs to Karamoja, he then commits a criminal offence, he is tried by the ordinary courts and sentenced to five years imprisonment, he comes out, you will still be interested in why he deserted the Army and he will be tried for desertion of the Army. It is still double jeopardy, is it not?

MAJ. GEN. TINYEFUZA: Mr. Chairman, our law as it stands now, actually does address that problem because it provides, for instance, that once a soldier, for instance, serves a prison sentence of two years, he automatically ceases to be an Army officer, he is dismissed with disgrace. So, already that is a law catering for indisciplined soldiers. So, after serving his sentence of committing whatever offence in Kotido, then he ceases to be a soldier of the National Resistance Army. So, it would make little sense to bring him back and convict him on desertion, because it would not make sense. However, Mr. Chairman, to allay fears of - if you could allow me, I do understand the problem of some Members in completely removing this Clause (10) because in a way, if leaves a blank, you know, a lacuna in the law, as to what really happens, especially, when a person cannot adduce - you know, adducing evidence in a criminal offence is very difficult, you must prove a case beyond reasonable doubt, and at times these soldiers will get away with these cases, you cannot prove these cases, you cannot prove these cases. But at the same time it is very clear that the man was with the gun unlawfully, this is something which can be easily proved, and yet which a civil court may not try because it is a service offence, it does not have it under - this is an example - under the criminal law or the Penal Code.

Mr. Chairman, that is why I had wanted to suggest an Amendment to the proposed Amendment of Hon. Mayombo that instead of deleting Clause (10) and allowing that gap to remain, if this House so allows, we could go back to Clause (9) and say, when 9 ends: "*proceedings relating to the conviction or acquittal...*" then add on - here I can be helped by the Legal and Drafting Committee to put it in a better form - "*provided that where a civil court determines that the offence committed by a person in a disciplined force also induces a service offence, such a case shall be referred to such a special tribunal for trial as a court of first instance*", so that we do not have this soldier to be tried in both courts. Should a civilian civil court decide that, actually, this also embodies service offenses, then it refers back this case for trial to the tribunal.

Mr. Chairman, why do I say this? Under our judicial system in the Army, we have passed laws where we have decided that in order to chair, for instance, a court martial in the Army, it will be done by a person, for instance, we shall call a Judge advocate. This is a person who will be equivalent or somebody quali-

fied to be a High Court Judge of Uganda, not below. So, Members should not fear that any member of the Armed Forces shall be chairing this court martial, we are trying to stop that. Secondly, we are allowing and opening up in specific criminal offenses the appearance of advocates in grave offenses and then we have like three senior officers sitting on that tribunal and where the sentence involves the trial of a soldier, this Court Martial or Court Martial Appeal Court has no jurisdiction, actually, to carry out the sentence without giving a chance to the soldier to appeal to the Supreme Court. So, even that one, we are actually, emphasising that where a soldier's life is threatened he has a right to appeal to the Supreme Court.

So, in other words, we are putting up what I would call - we are not blocking the linkage between the civil courts and the tribunals, that is why I had wanted to bring in this tribunal that since this linkage is there, we say that provided that where a civil court determines that the offence committed by that person also includes a service offence, then that case shall be referred to that tribunal to try the case as a court of first instance. I beg to move this Amendment to the proposed Amendment Mr. Chairman.

THE CHAIRMAN: Now, Hon. delegates, there is this proposition also emanating from the member of the Armed Forces. I do not know, this is just my reaction to that just by way of observation really, whether it is wise to go to the details that Hon. Tinyefunza is making or in view of the fact that the circumstances under which the interplay between the civilian court and a tribunal are not yet fully defined, whether it will not be wise to say - instead of adding a proviso, to start right at the beginning that "*Subject to such provision as Parliament may make in respect of trying members of disciplined forces...*" then you continue with the rest. Then Parliament can again make laws which will have been researched and go into greater detail than we can at this juncture here, actual detail. But this is just - I am just flagging this for you to think about.

MR. TINYEFUZA: Thank you, Mr. Chairman, for your very wise council, I have actually already thought about it. I think it is a worthwhile idea so that as long as the principle is articulated, then we can allow Parliament to do the rest. Mr. Chairman, you could help us to get that and then we see how we phrase it and *(Interruption)*.

THE CHAIRMAN: I do not know whether the Chairman has not forgotten what he said a few minutes ago. Hon. Omara Atubo is likely to improve on that and I think we should settle the text first and then we can continue. Let us hear from Hon. Omara Atubo, he seems to have some ideas, maybe, he has been drafting.

MR. OMARA ATUBO (Otuke County): Mr. Chairman, I do not know whether we are going into Hon. Tinyefunza's proposed Amendment and how to draft it. To me, I think this being a technical issue namely, when it comes to the issue of whether to be tried in the civilian court and military court or Police disciplinary code of conduct, and whether there is double jeopardy, it is not like saying the state has responsibility for orphans or women, or that this is a political system we are going to decide. Mr. Chairman, I think this is a highly technical point, and to me, I would prefer that whether we are going to draft it in the way of your proposal and the Amendment of Hon. Tinyefunza or - I think we better set the principle first, and my contribution is really based on that idea of the principal of the doctrine of double jeopardy, whether a person of a disciplined force runs the risk of being tried first of all in the ordinary civilian court of law or in the disciplinary court, and since we are dealing with Article (59) which is really concerning fair hearing and (58) is dealing with, really, justice in criminal courts and where also the criminal offence might be in another disciplinary court, could we set these principles first, and if need be, we may even need to delay the decision on it.

As I said, Mr. Chairman, it is a very technical matter and the voting or not voting for or against is not, to me, similar to, as I said, whether to vote for the State to look after the orphans or the widows. That is more of really a political decision of the CA, but whether an acquittal or a conflict between this court as to this effect, to me is a highly technical matter and I think we should give a contribution technically and if need be even refer it for a few days to have more input and I was prepared to give a little bit of information by virtue of my bit of training and information I have more on the side of the Police, because I think we are being taken away by the experience we have had in the Army. I have here the "*Police Bill*" with me. I have been a party to this Bill as a Member of the Legal Committee and I think if we looked even from the Police disciplinary code of conduct and Police case, we may be able to appreciate it more, and therefore, what is the purpose of Sub-clause (10).

That is my view - I am not ready with any proposed draft on the proposed Amendment. Thank you.

THE CHAIRMAN: Yes, Hon. Omara Atubo, that could be fair but the position is that this matter has gone to the Legal and Drafting Committee and achieved a deadlock, so we are finding a solution. What Hon. Tinyefunza had suggested was to add a proviso in relation to - so that we do close the gap. In other words, I think that would be acceptance that there is a role to be played by the two bodies, the tribunals and also the civilian courts. The Chair had suggested some form of wording which was to say it is not wise to try to deal into all the details at the moment, and then we were just going to say, "*Subject to such provision as may be made by Parliament in respect of trial of members of the disciplined forces, a person who shows that he has been...*" then that leaves it available for Parliament to sit down and say okay, these are circumstances or they can even set up a structure, an appellate structure, in such a way that you can move from the military court to the civilian court in respect of some matters as was mentioned by Hon. Tinyefunza, but let us first settle the wording and the attitude towards it so that we debate what we know.

MR. TIBAMANYA (Kashari County): Mr. Chairman, I would like to give some clarification. Thank you, Mr. Chairman. We have the words here, and it reads thus - Sub-section (9) will be reading as follows: "*Subject to any law Parliament may make regarding service offenses by members of the disciplined forces, a person who shows...*" those are the words we have come up with. *(Interjections)*- We propose that Sub-section (9) reads as follows: "*Subject to any law Parliament may make regarding service offenses by members of the disciplined forces, a person who shows that he has been...*"

THE CHAIRMAN: Now, let us go step by step. There is a Motion by Hon. Mayombo to delete the entire Clause (10). There is a proposition to amend by retaining as it is, but inserting provisions that leave open the areas in which Parliament may play in future to clarify situations. Now, if you look at our rules, we would be obliged to first deal with Hon. Mayombo's Motion, because if it goes through there is nothing to amend. Unless Hon. Mayombo and his Colleagues are prepared to withdraw, in which case now we have this one and the Motion on the Floor, but otherwise if we deal with Hon. Mayombo's and it is carried, then the attempt to amend does not arise, because there will be nothing to amend.

LT. MAYOMBO: Thank you, Mr. Chairman. I accept Mr. Chairman, to delete and then we amend Clause (9).

THE CHAIRMAN: No, but if you have deleted what do we amend?

LT. MAYOMBO: I accept to amend Clause (9), Mr. Chairman.

THE CHAIRMAN: Because you see, if we pronounce ourselves on the Motion that departs furthest from the provision, that is what our rule is saying, the one which departs furthest is the one which does extreme prejudice to the existence of that provision which is actually removing it. Having done so, there is nothing else to amend.

MR. S. KUTESA (Mawogola County): Mr. Chairman, I would like to seek clarification about the statement you have just made. It would appear to me, Mr. Chairman, that if the proposed Amendment by Hon. Urban Tibamanya to Clause (9) is approved by this House, then we would need to delete (10), and if we delete (10), then Mayombo's - and once Hon. Mayombo accepts the Amendment then the whole thing is done, so, we retain (9) and remove (10). If that is the correct position then - *(Interruption)*.

THE CHAIRMAN: Okay, sorry, the Chair was at fault. We are dealing with two separate provisions. This is an attempt to amend (9) and introduce some opening statement which gives power to Parliament, but then there is also a Motion on the Floor, I think that is how Hon. Mayombo was putting it. I was mistaken, I thought we were dealing with only one provision, that we delete (10).

Now, which one comes first? Supposing we delete (10) and the Amendment is not carried? Okay, let us do it this way. Let us start with (9), if we carry (9) then we delete (10). If we carry (9), I think the better Motion is this - the better Motion would be the one to say that I think we should have to rephrase our Amendment, we keep the wording, if we so choose, of Hon. Tibamanya, but the same Motion also includes deletion of (10) so that we vote only once.

Can I go over again? We have a proposal to amend - Order! Order!. There was a Motion to delete (10), Okay? There are arguments to the effect that it is not good to delete (10) and leave nothing in place, there

must be something in place. So, now the better way to debate this, if we agree that there is need to leave something, is to say or a Motion to be moved to say that Clause (9) be amended by (a) introducing the words proposed and (b) by deleting Clause (10), then we debate that one single Motion which has two legs to it, and if we carry it, then we shall have deleted (10) and amended (9). If it fails, we shall have both (9) and (10). Is that clear?

MR. SSEKANDI (Bukoto Central): Thank you very much, Mr. Chairman. Article (9), in my view, has no problem because this is expressing the well known principle of "*ultava acquit, ultava convict*". The problem is with (10), what we need to do with (10) is to show that the trial can only take place if the earlier tribunal had no jurisdiction to try the offence which comes in the second court. So, what we need to do is to improve on (10).

THE CHAIRMAN: That does not tally with the explanation we got from Hon. Tinyefunza. Let us hear from Hon. Kawanga.

MR. KAWANGA (Masaka Municipality): In support of what Hon. Ssekandi has said, Clause (9) sets the well known principle, and with all the sympathy that I have for Hon. Mayombo, I wish to state that the principle of double jeopardy would apply where you are talking about the established courts of judicature. It is only then - if the established courts of judicature are the ones which are trying you twice, then you talk about the principle of double jeopardy. I can see the injustice he is talking about, but the injustice he is talking about was created by a Statute, I think in error, in that it took on upon itself the duty of trying criminal offenses as if also these tribunals were also courts of judicature. But if we look at them as disciplinary tribunals, then the problem we have here would not arise. But I think to deal with his problem to ensure that somebody is not really put in practice to double jeopardy, we will have to deal with the law which Parliament put in place. But here we are being forced to change a principle in a Constitution because there is a subsidiary law which, actually, violates the major principle here - (*Interruption*).

MR. S. KUTESA: Point of information. Thank you very much, Mr. Chairman, and I also thank Hon. Kawanga for yielding the Floor. I would like to inform Hon. Kawanga that the proposed Amendment by Hon. Tibamanya vests the authority into

Parliament to change even the legislation it had, or make new legislation. It is sending - because of the lacuna already created today by having had a Statute that made all criminal offenses part of the disciplinary trials, then it is only Parliament that can change it. What we are trying to do here is to bring in the justice that Hon. Mayombo has been talking about. Because if we leave Article (10) as it is, indeed it is double jeopardy, because the mistakes already exist. There is already a Statute that makes all other Penal Code offenses triable by these tribunals. Now, what Hon. Tibamanya is doing, he is saying that we should leave that to Parliament to enact laws or amend existing laws, to put them into consonance with the dictum of non-double jeopardy, and the intention here will be achieved if we were to adopt Hon. Tibamanya's Amendment and consequently delete (10). If I may complete, Hon. Kawanga, it seems to me, Mr. Chairman, that to say that there is injustice but we should not cure it - I think it would be irresponsible of us. Secondly, I think Hon. Kawanga will realise that double jeopardy does not necessarily mean that you have civil competent courts of judicature. The moral behind it is that a person is not tried for the same offence twice, irrespective of which tribunal.

MR. KAWANGA: Mr. Chairman, I was winding up by saying that, actually, virtually everything that Hon. Sam Kutesa has said means that after we have made the Constitution here, it will be obvious that what is now obtaining under the existing law will be contrary to the provisions of this Constitution and should subsequently be appropriately amended not to offend against this principle, and I think that will have to solve the problem there, not here. Thank you, Mr. Chairman.

MR. BIDANDISSALI: Point of clarification. Mr. Chairman, as a lay man and before I decide on which way to vote, my constituency contains about three barracks and during the time, in my seeking for support, one of the soldiers raised a point saying that the Constitution should give them the right of legal representation, that is if he is being tried in a military court, he should be free to hire legal service. I did assume that under the present law, a soldier is not allowed to be represented. If that is not the case I should be clarified. But if it is the case, then I see that there are two legal courts but having two different yardsticks for justice. For the same offence, Bidandi can hire Hon. Kawanga here to plead for him, but for the same case, Hon. Mayombo cannot hire

Kawanga, he has got to face - I am just stating this, but I want to be clarified and I was also informed that a soldier who has lost in the courts within the Army court cannot appeal to a civilian court. Now, this makes my position difficult in the sense of making up my mind on this matter. If a soldier cannot appeal to a civilian court and if it is true that the soldier cannot bring Hon. Kawanga to stand for him in the court of law, then how am I sure that the soldier received the same treatment to justice as the person who is outside.

Therefore, what I am trying to drive at Mr. Chairman, is that before we take a decision which assumes that the two courts are on the same judicial consideration, and more or less interchangeable, we should not, I think, say that because the other court took a decision, therefore, it is in the same consideration, the same basis that this court should have taken. Just like the court in Karamoja, a civil court, would have taken the same consideration as the one in Mbarara or Kisoro. So, I need that clarification, is the soldier free to hire a lawyer of his own choice and if he is not, then I do not see the relationship which is being sought for now to say that that judgement should be considered to be almost the same as it were in a civilian court.

In short, Mr. Chairman, I am supporting the Amendment by Hon. Tinyefunza, because the court will be able to put in place - I beg your pardon, the Parliament will have the power to look into this anomaly. My soldiers in Nakawa and Mbuya feel it is an anomaly, it is unfair that they are not given the freedom to hire lawyers of their choice.

MR. AMAMA MBABAZI (Kinkizi County West): Thank you, Mr. Chairman. Mr. Chairman, I think a lot of confusion is caused by some misunderstanding I see in this Assembly on what a service offence is and how it compares with other offenses. Incidentally, when I put up my hand, I wanted to say earlier on that, in the previous constitutions. I think this problem was solved by giving an express definition of the service offence in the Constitution so that there is no mix up between a service offence and what I would call an ordinary criminal offence.

Mr. Chairman, I would like to inform the Assembly that it is possible for someone in uniform to commit an ordinary criminal offence. By the mere fact that he is in uniform does not turn it into a service offence. A service offence is that one which is committed by

say a soldier in the course of duty as a soldier. In that case there are tribunals mainly to deal really with discipline that deal with service offenses. If a soldier commits a crime, if he goes to town and knocks someone's teeth out after a quarrel, then that is an ordinary offence triable by ordinary courts. Now, in the course of committing an ordinary offence, of course, you could also commit a service offence. Taking a gun without permission and committing a crime with it is murder. One, there is the offence of murder as separate from the offence of bearing arms without authority. These are now two different crimes, offenses which can be tried separately.

MR. BIDANDI SSALI: Mr. Chairman, two soldiers are in the barracks of Mbuya playing about, they develop a quarrel and one kills the other, is that a service crime or an ordinary crime, and is he handed to normal civil courts or he is tried within the service law?

MR. AMAMA MBABAZI: Mr. Chairman, I would like to say that - of course, there are cases where the line separating the two is very thin, that is possible, and in the law, it is provided that, for example, the military tribunal could try an offence that ordinarily you would call murder. If in the judgement of the leadership there they think it has something to do with discipline of the force as well. Now, on the question of soldiers being entitled to a choice of an advocate to defend them, again this is determined really by the definition I have described. If an offence is a service offence, and it is being tried by a military tribunal, then according to our present rules, the culprit or the offender is not entitled to go outside the Army to seek private defence or an advocate to defend him, that is not possible. But what we actually do and what is provided for in the current Statute is that he is entitled to legal defence, which means that defence comes from within the Army. We have got a department that deals with that specifically, with trained lawyers.

Mr. Chairman, if on the other hand a soldier commits an offence which I would classify as an ordinary criminal offence like murder, then of course like any other ordinary citizen, he is entitled to a lawyer, if he goes to an ordinary court. So, Mr. Chairman, I just said it, that this clearly defines what this was, so that we know that the tribunals can try and we know what the other courts can try. It would save us a lot of these problems. Thank you.

THE CHAIRMAN: But Hon. Mbabazi, are you suggesting that, we should detail those here or we should go with the proposed amendment which would leave that to Parliament?

MR. MBABAZI: Yes, I support amendment by Hon. Tibamanya but I was not in his points that actually in the previous constitutions and I think in other constitutions have looked at. The service offence is to be defined within the constitution itself.

MR. OLWA (Kole County): Mr. Chairman, the way I look at this thing is that, Number (9) clearly indicates a principle that, once you are tried and convicted or acquitted, you cannot be tried again, except by superior court or by word of a superior court. I find that *(interruption)*- the electricity was doing amendment apparently. Now, Mr. Chairman, I find that to amend this particular number (9), in my view, would loose these very vital principle which has been laid down and yet at the same time, it looks as if number (10) cannot only be deleted because it conveys to us the principle which is now being brought about by the problem of disciplining or trying uniformed officers and men of our armed forces. So, in my own view, Mr. Chairman, I think the legal people to whom this matter has been referred have found the problem of Number (10) too difficult and, I just want to throw it away. And I think as a lay man, there must be something in Number (10) which must be amended to bring this concept very clearly without solving that problem through number (9). And therefore, looking at what Members have observed here, it is therefore, clear that, if we remove number (10), we are going to be left with a vacuum which can bring a problem. I think, Mr. Chairman, it is not too costly, we have heard from all the Members here. I think that, we can still refer this matter for the second time, for the second opinion so that, we get the concept clearly spelled out. This is my view, Mr. Chairman.

MR. OWOR (Aswa County): Thank you, Mr. Chairman. I would like to propose an idea that might clarify this. I intend to see that the problem here is that of where the first trial begins. Does it begin with that of the disciplinary court or does it begin with that of the ordinary court? And if you see, it can begin in either way. That begins to bring a lot of confusion. My proposal is that, in order to clarify this issue, the provision should clearly view the disciplinary court in the way the law takes administrative tribunals and if a situation arises where a Member of a discipline

force commits an offence triable by both the disciplinary court and ordinary court, the procedure should be that, the disciplinary court trials are enforced and then eventually, before executing the sentence, comes to the ordinary court for trial as an offence which is triable by the ordinary court. And it is eventually the ordinary court that will take cognisance of the findings of the disciplinary court. In that way, it will be what is normal in the administration of justice where administrated tribunals are subject to the ordinary court. And I also want to propose that, there should be a situation where there is an appeal which can lie from a disciplinary court to maybe the high court. And I believe that, if this is done, it will solve the problem of double jeopardy which, in my opinion, is not very clearly solved by the current provision. Thank you, Mr. Chairman.

MR. RINGWEGI (Padyere County): Thank you, Mr. Chairman. Mr. Chairman, I think we are actually labouring a point which is very obvious. Hon. Kawanga tried to guide the August Assembly in this respect and unfortunately, it has not come out very clearly to Hon. Members. The principle of double jeopardy is that, there is fear that we would be engaged in, if we left Clause (10) of this article does not come out under Clause 10, nor does it come out under Clause (9).

As Hon. Kawanga put it, the principle of double jeopardy is only applicable when the trial is by a similar court. It does not envisage any administrative tribunal. So, when we are talking about a member of a discipline force, we are actually talking about some special courts. These special courts are not only available for a man in uniform or a woman in uniform, but will also help administrative tribunals in the Civil Service. Supposing a member of the Civil service embezzles money, that person is subject to the disciplinary courts in the Civil Service under the Standing Orders and definitely, that person can be punished either by interdiction or dismissal. But that does not include the ordinary courts of judicature from trying that same persons for embezzlement. So, there is no double jeopardy in this case. In fact when we look at this amendment that is sought by Hon. Mayengo, we are only trying to remove all the disciplined men from being tried by the civil courts and pushing all their crimes to be tried by their special court. And this will not be permissible because, it will instead of trying to create discipline in the members of the discipline force, they will only be encouraged because, they will only be tried by

Members of their own feathers. I think they will be birds of the same feathers, they can either be tried with lenience, we have also heard in the past where a member of the discipline force kills a person in Luwero, instead of being tried there, or if he is tried at home, instead of passing a deterrent sentence, that member is only transferred from that detach in Luwero to another detach in Kotido. But what Clause (10) is seeking to do is that, if such a member is only transferred from Luwero to Kotido, the Civil court should still have authority to try him for a criminal offence. And if the court is satisfied that that criminal offence has been committed, that court will only impose a sentence and in the imposition of the sentence it will also take into account the kind of punishment that the administrative tribunal has already imposed on the member. So there will be no double jeopardy for that member. Only that, we are trying to ensure that the disciplined forces are disciplined in the manner in which the nature of their work dictates. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Members, I think let us go back to remember what the proposed amendment was. It was that Hon. Urban Tibamanya, and Hon. Tinyefunza were saying in the execution, the law that will be made would relate, I think to the disciplinary offenses or service offenses but not general offenses. In other words, my understanding was that, a soldier would not be accepted by virtue of that amendment. But the problem was, if you deleted (10), then that would create another problem. Hon. Tumukunde you have been wanting to say something.

MAJOR, TUMUKUNDE (Rubabo County): Thank you, Mr. Chairman. Mr. Chairman, there is a problem that is likely to come up just as I hear our arguments. There is a problem which is likely to come up from just the arguments I am hearing. In the first place, a military tribunal is subject, and shall always be, to the ordinary courts. That is one important thing which we must note. Another thing is that, we could borrow examples from other Armies. I know of countries and several Armies where what they call service offence is something that is limited to the operations of the army, but anything else is an ordinary crime and it is tried by ordinary courts. If in our circumstances, the situation is different, Mr. Chairman, I do suggest that, we amend it accordingly. So, by deleting (10), we would have left out a very big gap of the law whereby if a soldier commits a service offence, and in the process commits another crime, we find it difficult to punish him

for both. And like Hon. Ringwegi was saying, ordinarily, it is not double jeopardy for a soldier to be tried for a service offence in addition to another crime, that one is also true. Maybe what I think we should do, is to protect a soldier from appearing in court for the same ordinary crime. Because from what I have heard, it seems we have sort of mixed up ordinary crimes in the Penal Code and made them service offenses. In fact our law in the army was clearer when we were still in the bush, I think they have meddled it up now. There was what we called Operational Code of conduct that is what should be limited and be called a service offence. Because it is committed in the conduct of your own duty and in the activity of furthering your job or your occupation as a soldier. But it is the General code of conduct which we had which was supposed to address, in the absence of ordinary courts, other ordinary crimes. But now, I think when we came, to - about the experience we have, we mixed up everything. So, I do suggest that, this House allows that we keep (10), and it remains there to protect the population from a rough edged army, in case we get it. or rough edged police Force. So, we have got to keep it. Thank you, Mr. Chairman.

MR. MULENGA (Democratic Party): Mr. Chairman, I think Hon. Tumukunde has clarified this point. Particularly with reference to what has gone wrong in the creation of ordinary civil crimes into services offenses, which was also touched by Hon. Tinyefunza. Now, the answer is not in deleting Clause (10), the answer is in revisiting the Statute, the National Resistance Army Statute. And making sure that it provides for service offenses as the offenses triable by the court martial and the military tribunals.

Mr. Chairman, Clause (10) is, I think, being misunderstood by a number of contributors. Its purpose is to preserve that jurisdiction of the civil courts of the military as well as this discipline forces personnel. I have heard from Hon. Amama Mbabazi who described how you can have overlap of offenses. Now, if the major tribunal is going to try murder, and then after quitting, the man is tried on authority of the DPP in the High Court and is tried for murder, then you have double jeopardy. But if the armed forces statute is revisited *-(Interruption)-*

THE CHAIRMAN: Is that, not what comes out of 10?

MR. MULENGA: Well, Mr. Chairman, that is not the purpose of 10. May I say also, Mr. Chairman that, this is not a new provision. It was in 1962 constitution and it was in the 1967 constitution. And I am sure that, it is in many other constitutions. All being as clear as have been put by the various contributors, that through court, should retain that jurisdiction to try armed personnel, even if they have been tried through their disciplinary system for disciplinary or service offenses.

But, Mr. Chairman, may I specifically refer to the amendment proposed which I think is the one on the Floor proposed by Hon. Tibamanya and say, I disagree with it, entirely. I would oppose it, it does not help. Mr. Chairman, Clause (9) should not be tampered with. It has a purpose, it is very important, it is the one that is preventing anybody being tried for the same offence twice. There is need to help the military personnel or disciplined forces, it should be a separate provision. And I think that, if we put force in the Parliament, it may after disclosure, it may have to amend the NRA Statute. Mr. Chairman, I beg to oppose the amendment on the Floor and I would also oppose to its deletion. I think this Clause (10) has a useful purpose. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Mayengo, you wanted to inform or what?

MR. MIYINGO: You see, Mr. Chairman, we had a constitution in 1962, we had a constitution in 1967, a very good person being here, Mr. Chairman, is once we find a problem, to solve it. We are here to write a new constitution for Uganda which satisfies all aspects of its society. Mr. Chairman, I still think it is our duty to address these matters very seriously. Today, there is a law and once you allow this provision to continue, we introduce it to our statute to books, you empower another government if it turns up tomorrow, to pass another law which will allow me to be tried twice. I think that is injustice, Mr. Chairman because I know today, in one charge sheet, you can put two counts. That Miyingo committed a service offence, at the same time, he committed a criminal offence. And I am tried by a competent court on both offenses. But this provision allows it for me to be retried and convicted for the same offence. And I think that is double jeopardy.

MR. MASIKA (Mbale Municipality): Clause number 10 which is disturbing, must have been introduced at the request of the disciplined forces.

And if it was introduced by them and they now feel they do not need it, there is no need for us to waste time on it. Clause number 9 is the one which provides for double jeopardy. Now, the amendment suggested by Hon. Tibamanya is totally out of question. I do not like it. Just as Hon. Mulenga says, it should not tamper with what the whole world knows as double jeopardy. So, I think we have wasted time on something we need not have listened to, namely that, Clause 10 is not something which we need and I do not think that, army personnel should be punished twice, there is no reason for it. If a person has been tried by the ordinary court and has been acquitted, that is justice.

THE CHAIRMAN: Are you taking it?

MR. MASIKA: Yes, Mr. Chairman.

AN HON. DELEGATE: Point of information. Mr. Chairman, this is information to Hon. Masika that, while he is thinking of the army situation, he should not forget about another discipline force called Police. Mr. Chairman, under the Police Bill which has just been passed, there is a very elaborate disciplinary code of conduct and how they are supposed to be tried under the disciplinary code of conduct. And I will just read to you, the penalty for the disciplinary offenses: For example, there are 11, - dismissal, discharge - since the Police Officer ceased to be or is unlikely to become efficient - demotion or reduction in rank, stockade, withholding or default of incrementing salary scale, fine not exceeding one third of the defaulters salary, recovery of the cost or part of the cost of any loss or damage caused by default or negligence, imprisonment in police custody, confinement in resident or barracks, severe reprimand, communal labour.

Mr. Chairman, an offence which a policeman could commit like in Number 7 could be like this: a police officer rules out authority or reasonable excuse, releases or causes to be released a prisoner or helps a prisoner to escape from lawful custody on account of corrupt dealings with that prisoner or its agent, commits an offence. Now, assuming that, he is convicted of offence number 7, and he is dismissed for assisting a prisoner to escape. This is a disciplinary offence under the Police Code of Conduct, but still, this policeman can be charged under ordinary code for assisting or causing a prisoner to escape and will be sentenced. Now the mistake we are doing here, Mr. Chairman, is to think too much of one

discipline force called the Army and not to think of the Police Disciplinary Code of conduct, the Prisons Disciplinary Code of Conduct. The mistake we have made under the under the National Resistance Army Statute, is that, we have transferred too many offenses which should normally be tried by an ordinary court, and we have lapped it to be tried by the army. Now, we are being told, it is a special situation. But this special situation may not go for long.

Now, if policeman who commits murder using a police gun is not going to be tried under Disciplinary Code of Conduct, he is going to be taken straight to an ordinary court. So, Mr. Chairman, we should not even have wasted so much time. Clause 10 is very important. It is permissive, it allows for this Disciplinary Code of Trials under various disciplinary forces and the moment we over concentrate under the special - *(Interjection)*

THE CHAIRMAN: I think you have informed the Hon. Member, now we are going into a different thing.

AN HON. DELEGATE: Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. George Masika, you were still on the Floor.

MR. MASIKA: Thank you, for the information. I only need to add that, I was not talking about the disciplinary offenses. The Constitution of 1962, Mr. Chairman, defines what criminal offence is. When we are talking about criminal offence we are talking about a criminal offence and not disciplinary offenses. I can also go further and add that, if the army turns criminal offenses into disciplinary offenses, the ordinary courts will not be amused when they fail to convict and hope that, the ordinary civil courts should also try the person again, because those will be same facts. So, the point which I continue to make, Mr. Chairman, as before the interruption is that, if a criminal offence having been committed and tried, it should not be tried again either way, whether it is before the service court or a tribunal or the civil courts. Because that is what is meant by double jeopardy. And I think, we should simply leave Clause 9 as it is - remove Clause 10 which is trying to smuggle into the constitution, a way for the service, either Prisons, Police or Army to prosecute their own person again in their own tribunals and that to me is not acceptable. Because double jeopardy is

double whether you are doing it under the civil or through the tribunals as long as the offence is actually criminal. So, I end by urging members to reject the amendment to clause Number 9. But accept Hon. Mayombo withdrawal of Clause 10, and let us proceed.

THE CHAIRMAN: Now, Hon. Tibamanya first because you - no, let us first of all finalise the concepts before we argue whether it is good or bad.

MR. TIBAMANYA (Kashari county): Thank you, Mr. Chairman. Mr. Chairman, in amendment, we have not done anything. We have not varied, subtracted or added anything to the original Clause 9, the principle has remained. It is undisturbed. Members should not fear that it has been tampered with at all, no. What we have done is, fix a clause just before the 9 starts in order to preserve number 10 in some way. That is all we have done. And in my opinion, it is a very good amendment and I urge members to carry it. Thank you.

MR. NSUBUGA NSAMBU (Makindye Division West): Thank you very much, Mr. Chairman. What we came for here, Mr. Chairman, is to see that we make everything correct. It is not only the law referred to which is going to be amended, but there are many rules existing at the moment which will be amended as a result of promulgation of this constitution. And for that reason, I support Hon. Mayombo that, we delete this Article 10 with a hope that, the other subsidiary laws will be adjusted according to the constitution which is the source of all the laws. Thank you, very much.

THE CHAIRMAN: Now, I think we have heard as many lawyers as we can this afternoon on this matter. The rest will be giving us their assistance as assessors in view of the submissions that we have heard from eminent lawyers. Now, the position is as follows. Hon. Mayombo was prepared to go with the proposition that we amend 9 and delete 10. But there is also - and that would have the effect of only saying that, Parliament may make some provision in relation to offenses of disciplined forces with regard to their trial. Now, there is also a very strong feeling on the ground that we should preserve 10. Likewise, there is also a strong feeling on the ground that, we should preserve 9 untouched and remove 10. Yes, there has been. Hon. Nsambu has just said so. Hon. Masika said so, and so on. Now, so we have to pronounce ourselves on the proposed amendment by

- now, let us get from Hon. Mayombo. Do you accept the proposed amendment? In other words, you are prepared to amend 9.

LT.MAYOMBO: I am prepared to amend 9, and with the amendment of 9, 10 will be irrelevant.

THE CHAIRMAN: They would have to take it as one, so that if the Motion fails, we retain 9 and 10 as they are, if it passes, we amend 9 and drop 10. But we cannot be voting separately. Can I hear one or two people on that one? And preferably lawyers. *(Laughter)* Let us be honest with each other. Let us be honest with each other. What we are discussing now are legal concepts whether we like it or not. This is true. After we have sorted the issues, Members can talk about the wisdom of it or not. But otherwise, these are not general statements. Let me first hear from two lawyers and then two assessors. *Order! Order!* Let us first of all settle this matter because it is a very tricky matter really. This is only for guidance, it is not for final decision. Let us first of all hear from Hon. Kavuma, and then Hon. Malinga and then we shall also hear from other people.

MR. KAVUMA: Thank you very much, Mr. Chairman. Mr. Chairman, I will make my contribution brief and I am only saying that, what we are really saying is, these soldiers have identified a problem with our constitution as it stands. They are saying, it is unfair to be tried twice for the same offence or offenses on similar facts. Mr. Chairman, we are now putting our history of bad armies, we are giving it over weight really. I think the challenge is for us politically to make sure that, we shall never have bad armies. And I am saying how? Mr. Chairman, the population should take charge of ensuring that, whoever gets recruited into the army is a person who is going to behave in accordance with the principles that are acceptable to a civilised society. Once we have done that, Mr. Chairman, we are saying let them be tried, but like civilians, who are not tried twice for the same offence, let also them be subjected to one process of judicial decision. Mr. Chairman, double jeopardy does not only happen when there is a sentence passed. You can be jeopardised even when you are psychologically tortured when I know that, even after serving this sentence, some other court may try me. Mr. Chairman, that kind of mental torture is unbecoming in a civilised society.

Mr. Chairman, some arguments have been advanced that, actually this 10 is not dangerous, it does

not apply to the principle of double jeopardy, I want to make it clear Mr. Chairman. My understanding is that it is only saying that, in 9 if you are a civilian, no problem but if you are a soldier, you can be tried from some other quarters and then because you are a soldier who committed the mistake of trying to defend your country, you can also be subjected to the agony of going through another trial and I think we should not be emotional, we should try to see justice and we should not try to apply double standards. Mr. Chairman, I heard of a number of issues mentioned as offenses which in fact were purely disciplinary matters. They should not derail our thinking, we are considering a matter that is putting the life of a Ugandan in jeopardy by being required, because he is a Member of a disciplined profession, Member of the Police or Prisons whatever it may be, which his counterpart in the civilian life is exempted from by the constitution. Mr. Chairman, if need arises, I do not think that a deletion of number 10 forbids Parliament at any particular time to revisit the law that applies to the Members of the disciplined professions. I therefore, Mr. Chairman, urge Members to be realistic and accept that one principle to apply to all Ugandans, whether civilian or soldiers by deleting number 10 with a small amendment proposed by Hon. Mayombo. I thank you, Sir.

MR. MALINGA (Usuk County): Thank you, Mr. Chairman. This provision which we considered and we preserve those provisions 9 and 10. And these provisions we have lived with them, since 1962 and 1967 and we have not had any problem with it. These provisions actually are in favour of the army. Because if you enforce 9 strictly, it may not give the service forces authority to discipline their people after they have been disciplined through the court - *(Applause)*. So, 10 seeks in fact to strengthen discipline in the forces, not to reduce it. The people in the forces will use their own judgement when to send this person for a second trial within the service, if they feel that it is really necessary to do so. I am surprised to hear that the solicitor general, who himself has been a director of public prosecution for this country has advised that we drop 10. Because if we drop 10, there will be a problem for the people who are enforcing the law on the ground. A policeman will look the other way once he sees a man in uniform committing a crime. Because we are saying, by removing 10, that only the service forces will discipline their people. So, they say, I will look for a military police man to show him what his colleague has done. Otherwise, it is none of my business. We are going to discuss in article 124, setting up the

office of director of public prosecutions and we shall say that, one of his jobs is to institute criminal proceedings in respect of all criminal offenses in Uganda. And he will be assisted by the police. When we are going to discuss the police in 241 - the Functions of the Police - one of them is to maintain law and order. So, if we remove 10, we are weakening these forces, the Police and the Director of Public Prosecution (*Applause*).

So, I would like to allay fears of my Hon. Colleague Hon. Mayombo that, 10 is really in the interest of armed forces. So, I would like - I may have to say this - Okay, I may say this, we have - I have, just for the past one year and a half, been working on the Judicial Commission of Inquiry into the mismanagement of Criminal Cases, and one of the problems we identified was that, there was a weakness in the Police - Internal Disciplining of the Police, and we really say, it is important for the force to have a right to discipline his own people. Otherwise, it cannot deliver. And that is why we need 10. Because 9 and 11 seek to give protection to a person in various circumstances, if he has been pardoned by the President, although he has committed a crime, you cannot take him to court. Similarly in 9, once he has been tried by a competent court, you cannot try him. Yet it may be necessary to try this person in the service. So, hon. Colleagues, I would like to appeal to you that, let us maintain 9 and 10. (*Applause*) Because we have the assurance that, if we have that good army, which it is, then they will use it very sparingly as and when necessary, not on everything.

MR. MULINDWA BIRIMUMASO (Bukoto West): Thank you, Mr. Chairman. And I would request the assembly to benefit from the general knowledge of justice by the assessor. Mr. Chairman, actually all the confusion we have had, I would say I can attribute it to the - the message here in 10 is simple, and it can be looked at as it is. I do not think it does provide double suffering. I call it is easier for me to mention double suffering. Mr. Chairman, what this Clause 10 actually does is to disempower these other disciplinary courts to try criminal offenses. This is what it does. And if the Statute of NRA empowers these different courts to try these criminal offenses. The same now, Parliament is to revisit and demarcate what are criminal offenses and service offenses. Mr. Chairman, and here it is indicated, if you read 9 properly and 10, what is being referred to, to be tried by the ordinary court is the criminal offence and it does not combine service offenses into

ordinary offenses. And we should not restrict ourselves to the NRA alone. We can even look at other bodies that have ethics. If a doctor undertakes an abortion and he is acquitted, he might go back to the profession and be cancelled out. So, Mr. Chairman, I want to request Members to look at this provision as a major point disempowering the final courts to cover criminal offenses. And it is a duty of our Parliament now to specify what are criminal offenses which must be tried by ordinary courts if any Ugandan commits them. And even those service offenses which must be tried by these very courts in their respective bodies, even if it is NRA, the Police, or the Prisons. Thank you, Mr. Chairman.

DR. KABAYO (Kassanda South): After listening to our learned Colleagues in the Assembly, I am able to assess as follows, Mr. Chairman. There are four scenarios that confront us today, that we amend 9 and delete 10, we amend 9 and retain 10 or retain 9 and delete 10, or retain both 9 and 10 as they are now. Mr. Chairman, having listened to all views, my opinion is that, we should retain 9 and 10 as they are (*Applause*). The apparent problem is that, there is in operation a law which I think is a bad law, and since this is going to be a constitution, all bad laws will have to change and to be in conformity with the constitution. Mr. Chairman, therefore, I support that we retain 9 and 10 as they are. Thank you very much, Mr. Chairman.

MR. ELYAU (Kalaki County): I also stand to say that, 9 and 10 be retained for these purposes. As we listened very carefully, it appears that our brothers and sisters who are in the army should also have a freedom to have somebody to defend him or her in case he has made a mistake. So that, the doors of justice and defence is open to all. So, if we remove this, if we go back to hear what brother Bidandi Ssali was saying, it is true these chaps in the military have no say in case they are handled in such a serious law. We passed a law in the NRC not knowing that this was necessary. Especially, Mr. Chairman, when the Code was meant for commanding the armies and making discipline. But this is a serious law which shall have to live for sometime, so we need to give room for everybody in Uganda to be defended by a lawyer he can decide. So, we should retain 10 and 9 equally.

THE CHAIRMAN: Okay, now Hon. Delegates, I think we could not hear any more than we have heard really. We have now a situation as this. For

purposes of our making a decision, we had an amendment which sought to delete 10 but the movers were prepared to accept and there was no connotation that we could move an amendment to 9, which also would tally with a deletion of 10. I think that is what we should be really pronouncing ourselves on. Because you see, if we take the amendment that 9 be amended in terms as moved by Hon. Tinyefunza and Hon. Tibamanya which also now carries a consequence of deleting 10, then the following can be the answer. If it is carried, then 10 falls, and 9 is amended as it was proposed. If the proposition is not carried, then we shall have both 9 and 10 remaining as they are.

That is what the implication of it would be. It seems the assessors have already made up their minds. Anyway, now I think - because you see, in a debate of this nature, unfortunately if I gave the Floor to another person, he will be just expanding the discussion further. Hon. Tinyefunza, are you trying to withdraw the amendment or something?

MAJ GEN. TINYEFUZA: No, Mr. chairman, I wanted to request you to give the Mover a chance to say a word before you put the question, Mr. Chairman.

THE CHAIRMAN: Okay, it is only fair. Let us give him a chance.

MAJ GEN. TINYEFUZA: Thank you, Mr. Chairman. Fellow Delegates, I appeal to you to be a bit patient. Because this law we are about to pass, I think it is only fair that all groups involved in this Country are given a fair hearing when we are passing these provisions. Mr. Chairman, I would like first of all to inform the House that, while some Members think that Clause 10 is of no consequence, it has been there all this time, I want to inform them that, the armies at the hands of which many Ugandans have lost their lives have existed during the time when this provision was there. The 1962 constitution, the 1967 Constitution which operates up to now did not stop the development of bad armies in Uganda. So, actually the question of a disciplined army is more of a political question than a legal question, Mr. Chairman. Secondly, Mr. Chairman, I would like the Hon. Members to note very seriously that, while we may think that Clause 10 does not do any harm to us currently, there is a law in place right now in Uganda, which affects men and women in the Armed Forces, especially in the army, which tries a soldier for a

criminal offence as if it was a service offence. Right now, under the army statute, 17 crimes carry death sentence, and some of these crimes actually, in ordinary courts can even just be reprimanded, for us, it is death sentence.

I was fearing Hon. Omara Atubo talking about punishments in the Police. He was talking about demotion, reprimand, I did not hear him say, death. But for us here, even without going through the rules of law, you know all this business and representation by advocates qualified. I am sure you heard Hon. Amama Mbabazi (Kinkizi West) telling you, Mr. Chairman, that, we have representation of our soldiers from the judicial - rather the legal department in the army. Now, these are young boys who have just left Makerere normally, with one year's experience. These boys are the ones coming to represent your son before a tribunal of a non qualified man to try him for murder. And now you are saying we should maintain this so that the service offence, while it is still in our Statute books, murder is one of them, rape is one of them, whatever is one of them, then they should appear before these people and be executed. I think this is very serious, Mr. Chairman. Therefore, I appeal to members to allow the amendment of 9. Actually they can improve it if some Members do not want to join the amendment to 9, they could make even an independent provision of 10 in the words as provided in their proposed amendment so that we allow Parliament, in future, either to amend the law, to amend the Statute, to say that, disciplinary offenses shall also continue being - I mean including criminal offenses so that we allow parliament, since the representatives of the people are there to determine on these matters of services offenses, than taking this blanket provision, Mr. Chairman, which under the current law means that a boy shall be executed by firing squad, because he broke into a shop and stole a bag of sugar, which under the criminal law, he will be in prison for only six months. We think, our soldiers need some leniency, Mr. Chairman. Thank you, Mr. Chairman.

THE CHAIRMAN: I am putting the question. And before I do, let me repeat what the effect would be of your vote. There is an amendment to 9 to enable Parliament to make laws in respect of trial of members of disciplined forces in respect of discipline offenses under the laws to be made. And if that is carried, then the second leg of that amendment is that, 10 falls by the way side. So, we shall have 9 as amended and 10 repealed. If however, the amend-

ment is not carried, then 9 and 10 will remain as they are. That is, now you are voting on the Motion of Hon. Tinyefunza and Hon. Urban Tibamanya in terms of amendment of 9 and deletion of 10. That is the "Aye". The "No" will be the opposite of that so that you do not vote on the wrong side. I now put the question.

(Question put and negatived)

THE CHAIRMAN: Order! Order! It means that 9 and 10 remain in terms in which they are in the Draft Constitution. *(Applause)*

Hon. Delegates, that means, we had not pronounced ourselves finally on 58, because of that reference unless the Deputy Chairman or Legal and Drafting Committee can tell me there is another amendment pending on 58.

MR. WACHA: Thank you, Mr. Chairman. That will be all for 58, Mr. Chairman after that very wise decision. I think that is all for 58.

THE CHAIRMAN: I am not quite sure whether we did carry out some amendments to 58 along the way. It was only that one. So, now we have to pronounce ourselves on 58, on the question whether or not, it should stand part of the Draft Constitution. Now, let me put the question.

(Question put and agreed to)

THE CHAIRMAN: Hon. Delegates, now we move back to our list of amendments and you find that we have article 63, we disposed of 62 this morning, we have 63 and on 63, we have a number of amendments proposed by Hon. Mazima Eliphaz, and so I give him the Floor in respect of number 20.

MR. MAZIMA: Thank you very much, Mr. Chairman. Mr. Chairman, the amendment on article 63 Clause 1 is consequenced by the Honourable from Arua Municipality and Hon. Wasswa Lule from Rubaga North. Mr. Chairman, I beg to move that Article 60 Clause (1) be deleted and the following Article be inserted.

THE CHAIRMAN: You mean 63?

MR. MAZIMA: 63, I beg your pardon. I read, "The right of a person with a disability to respect and human dignity shall be recognized by State and society, and the State and the society shall take

appropriate measures to ensure that, persons with disabilities realise their full mental and physical potential".

THE CHAIRMAN: You have got the text appearing at 20, and is that supported or is it seconded? So, it is seconded by Hon. Janet Mukwaya and many others. Would you go on to speak to your Motion Please?

MR. MAZIMA: Mr. Chairman, I have effected two major changes in the original Clause. The words, "the disabled and the handicapped", and then the words, "shall take measures". Why have I done this, Mr. Chairman? Language is a powerful and an important tool for initiating ideas and ultimately, the public attitudes which also determine the nature of the action that is to be taken. Words in most cases, Mr. Chairman, hinder persons with disabilities from gaining full integration acceptance and participation in society. It is therefore, wise, Mr. Chairman, to choose the words that one should use in order to portray positive image which will help to overcome some of the problems I have mentioned above.

In that regard, Mr. Chairman, I would like to define the word "disabled", the word "handicapped" and the word "disability", which replaces the two to justify the reasons for the amendment. I am quoting from the book entitled "A Well With Words" which contains guidelines and appropriate technology for the portrayal of persons with disabilities and it is printed in Canada. I am starting with the word, "disabled". It is described like this. I quote, "The word disabled, is an adjective not a noun. But are not conditions. Do not use disabled, use persons with disabilities". The word "handicap". I quote: "Handicap is an environmental or an attitudinal barrater that limits the opportunity of a person to participate fully. Negative attitudes, or inaccess of entrances to buildings are examples of a handicap". I would like to add, Mr. Chairman, that "handicap" is the relationship between an individual and the environment, puts imitations on you, you'll fail to perform your duties. A few hours ago, when lights were off, we had that big handicap, so in as much as it refers to disabled people, it can as well refer to other people who are not disabled.

The word "disability", Mr. Chairman, is a functional limitation where there is restriction of an individual's ability to perform an activity like seeing,

hearing, walking like myself and so on and so forth. With those definitions, Mr. Chairman, that is why I prefer the word "disability" to bring together all those. And it can be mental limitation, it can be physical limitation and it can be sensory limitation, it covers all.

Then the words, "shall encourage". Mr. Chairman, I have been instructed by my people that the problem is that we have not been encouraged - we have been encouraged but the problem is, government and society have not taken the rightful measures in order to empower us to become or to improve on our potential. For example, access to the available services is limited, access to the available opportunity is limited, and access to the available opportunities or resources is limited. That is why I am saying that the motion should read, "*The right of persons with disabilities, respect and human dignity shall be recognised by the State and society and the State and society shall take appropriate measures to ensure that persons with disabilities realise their full mental and physical potential*". We are talking about empowerment not being encouraged as if we have been refused to take the advice. Thank you, Mr. Chairman.

MR. AMAMA MBABAZI: Thank you very much Mr. Chairman. Mr. Chairman, I am in support of this amendment generally but I would like to suggest an amendment to this amendment which I have discussed with the mover in order to provide better facilities for our handicapped people and if I can go ahead and propose the amendment Mr. Chairman, I would like to add immediately after the word "measures", the following words: "*including providing facilities for special education*" and then continue with the rest of the sentence so that the new proposal as a whole reads as follows: "*The right of persons with disabilities - no but I think there is something funny with this.*"

THE CHAIRMAN: No, the respect and human dignity

MR. AMAMA MBABAZI: The original one was saying the right of the disabled.

THE CHAIRMAN: Hon. Mazima spent about five minutes explaining why he has chosen to move away from the other language to the word of disability.

MR. AMAMA MBABAZI: Mr. Chairman - okay, let me read it as it is although it does not sound - "*The rights of persons with disabilities to respect and human dignity shall be recognised by the State and society and the State and society shall take appropriate measures including providing facilities for special education to ensure that persons with disabilities realise their full mental and physical potential*".

MR. MAZIMA: Mr. Chairman, I agree with the mover but the advice I got from the Legal and Drafting Committee, I had included such a phrase. They advised me to leave it so as to allow Parliament to work out the details including that one mentioned.

THE CHAIRMAN: Hon. Mbabazi, do you still want to insist?

MR. AMAMA MBABAZI: Yes, I do Mr. Chairman. The reason why I include this is because of our circumstances in this Republic.

THE CHAIRMAN: But you have not got a seconder, so we do not know whether we should let you speak to it. Okay, you have been fully seconded.

MR. AMAMA MBABAZI: Mr. Chairman, I have the whole Minister for Education who happens to represent Igara East. Mr. Chairman, the reason why I move this amendment is because of the circumstances in which especially our mentally disabled people are treated in this Republic. Mr. Chairman, all Members know that our society, had not reached a level where they accepted mentally handicapped people as acceptable human beings. In fact in many places, including my place, when you are unfortunate to produce a mentally handicapped child, then you are forced by custom I suppose, to hide away this child from society. Some went to the extent of killing them. Obviously, this is wrong because any child is a God given child and I think society owes them a right to live as normally as possible. In other societies, what has happened is that mentally handicapped children are recognised for their handicap and society does everything possible to facilitate them to acquire an ability to live independently. This is by providing special education for them. Many of them, you will find that although they are slower at learning, slower than the ordinary children in class, if you give them special education, nevertheless, they will learn something and be able to look after themselves instead of being dependant on their parents or soci-

ety. I therefore feel that it is very important at this time, to introduce a provision that puts an obligation on the State and society as a whole, to provide for special education of those who have learning difficulties or those in the past who were termed as being mentally handicapped. Thank you.

MR. LEANDER KOMAKEC: Yes, Mr. Chairman, I would like to remind or oppose the amendment by Hon. Amama Mbabazi for one reason. We are engaged in a serious exercise of writing a Constitution. Whereas I will sympathise with the idea of blaming the measures, education is not the only appropriate measure. There are things to do with attitude and other things. I think we should allow Parliament to think out of the various ways they can help people with disabilities. So it is not necessary to name education or single out education, important as it is, to single it out as the only measure although you say including that one. But I think this is a Constitution enabling legal and political document and let us just enable society to do what it must to assist these people with disabilities. So I think it is not necessary really to load ourselves with these phrases like education or whatever. So for simplicity and being broad enough, the principle is acceptable and I think it is straight forward. So I agree with what the Legal and Drafting Committee has done advising the original motion, to leave it as it is. Thank you Mr. Chairman.

PROF. KABWEGYERE: Thank you Mr. Chairman. I also oppose the amendment because approved measures should be able to cover all the needs, the different needs. Mr. chairman, it is not education alone. There are people who need limbs, there are those who need wheel-chairs, you may even talk in terms of having employment, you have cases of special lifts, different stairs for them. They are so many and the area of disability is - there are people who cannot speak properly although you know - hearing aids, so there are many varieties of these things. So I think really, if a government or a country is self respecting and takes appropriate measures, they will look into those areas and handle them in a hierarchy of needs otherwise, if we concentrate on education alone, we may miss a whole range of disabilities that exist among us. I thank you.

MR. BATEGANYA: Thank you Mr. Chairman. I would like to oppose the amendment because the sentiments of this House are that where possible, this Constitution should be as brief as possible and

according to the words, "*special arrangements*", they also take into consideration education. Sir, I would like to strongly oppose the amendment on those grounds and also suggest that you put the question. Thank you very much.

THE CHAIRMAN: Okay, let us pronounce ourselves on the amendment and then we go to the original if it is not carried. If it is carried, we go back to the original as amended because the amendment does not negate the original. The right of reply is exercised in very, very rare circumstances, otherwise you would have a lot of contributions but since you feel really very strongly on this issue, maybe we should give you the chance, before we put the question.

MR. AMAMA MBABAZI: Mr. Chairman, that is far from my thought. I must say I am sympathetic to the view that we should make this constitution as short as possible and general. But I raised this especially because of the attitude that we have in our society, the fact that this would be introducing a new idea in our society altogether where we accept mentally handicapped especially as people that deserve attention of society. Mr. Chairman, this cannot be compared to the other needs like wheel-chairs for those limb problems and things of the kind. These can be taken care of by the phrase, "*appropriate measures*". But I was raising the question of mentally handicapped because up to now, people even fear to talk about it in public. So I thought this was really breaking fresh ground. Thank you.

THE CHAIRMAN: Okay, let us pronounce ourselves on this.

MR. MUSUMBA: Thank you very much Mr. Chairman. Mr. Chairman, I seek clarification. Of course I am in support of the amendment, of the original amendment by Eliphaz but I just seek clarification. What is the import of this statement, "*Society shall take appropriate measures to ensure that people with disabilities realise their full mental and physical potential*"? What is the import of this statement? I just want to know. How is it loaded vis-a-vis the society?

THE CHAIRMAN: I thought one member went to the extent of almost enumerating some of the things that society should do apart from education and all sorts of things. I mean, for instance, if we had designed this hall with this provision in mind, we

would have had some other situation which would help Hon. Mazima and maybe someone who comes on a wheel-chair. But as it is now, it would be very difficult to come with a wheel-chair in here. These are some of the things I think but we cannot enumerate them here right now.

MR. ADOKO NEKYON: Before you put the question, I was under the impression that the amendment moved by Hon. Amama Mbabazi is meant to insert for the avoidance of doubt with whatever Parliament we do have. What he is saying, one of the things which must actually be included is the provision for special education for the handicapped people. If you look at Article 136 Clause 1,2,3, I think you find a similar arrangement. This would help the house very much. Mr. Chairman, Article 136 Clauses 1 to 3. It is very brief. (*Interjections*). Yes, I am saying there is a similar provision there where - yes, I am saying legal arrangement is seen where you say that "*Voters have got the right to recall the Members*". And then 2, you say, "*Parliament shall make law to prescribe the grounds and procedure to be followed for the recall of a Member of Parliament under this article*" then 3 you say, "*For the avoidance of doubt physical incapacity and mental capacity have been included among the grounds under this article*". It means we are telling Parliament to make the laws but one of the grounds which should be included in their Parliamentary law must be this one. So that is what Amama Mbabazi is following. I do not see anything funny with it.

DR. WANDIRA KAZIBWE: Point of information. Thank you Mr. Chairman. I think this information was for Hon. Nekyon but it will benefit the House which may be derailed. Physical disability is very different from physical incapacity Mr. Chairman and it is the same as mental incapacity which is very different from mental disability. The two are completely different conditions. If you are physically incapacitated, you are really incapacitated medically. Mr. Chairman, this relates to diseases like if you become very ill for a long, long time and you are bed-ridden and you are denying your constituents of being represented. That is what is called physical incapacity. Whereas somebody who is - (*Interruption*) -

THE CHAIRMAN: No, but I think Hon. Kazibwe, you are misunderstanding what Hon. Nekyon was all about. Hon. Nekyon was using it to argue by analogy in terms of drafting or couching concept. He

is saying, there is nothing to say "*shall take appropriate measures including...*" - for emphasis. "*Including*" or "*making*" is an avoidance of doubt provision and here he was founding strength from the fact that in the Constitution, there are some provisions which are drafted on those lines. I think that is all he was saying.

DR. WANDIRA-KAZIBWE: Mr. Chairman, I want to take this opportunity to oppose the amendment - Thank you - by Hon. Amama Mbabazi. It narrows us down.

THE CHAIRMAN: Anyway, now, Hon. Delegates, you have heard the arguments for and against. Let us vote on the amendment first that what he is saying is that we should add the words, "*including provision of special education*", in the amendment proposed by Hon. Mazima who does not seem to object except that he dropped it on advice of the Legal and Drafting Committee and once we do that, then we go back to the original motion. Now I put the question.

(*Question put and Negatived*)

THE CHAIRMAN: Now, we go back to the motion. Now, do you need to debate this? I will now put the question on Hon. Mazima's amendment.

(*Question on the amendment put and agreed to*).

THE CHAIRMAN: Hon. Mazima, you have another amendment on Article 2.

MR. MAZIMA: Thank you Mr. Chairman. Mr. Chairman, having passed an Article on affirmative action and having provided that Parliament shall make relevant laws for the purposes of giving full effect to the above Clause which I am not quoting, I get persuaded that clause 2 of Article 53 is redundant. So, I beg to move that it should be deleted.

THE CHAIRMAN: The original amendment was that - what appears on the circulated document was that to change the words, "*persons with disability*", but Hon. Mazima is now saying that in view of the fact that we have said the State and society shall take appropriate measures to ensure that persons with disabilities realise their full mental and physical potential, he doesn't see the need for it. Well that is his motion. Unless of course the question is that he has since been better advised. Hon. Mazima, do you want to proceed with the deletion or?

MR. MAZIMA: Mr. Chairman, if it is not a repetition, then I withdraw the first motion and further move that the words, "handicap" and "disabled" be removed and be replaced by "persons with disabilities" so that it reads as follows: "Parliament shall enact laws appropriate for the protection of persons with disabilities". Full stop.

(Question put and agreed to)

THE CHAIRMAN: Now, finally we put the question on 63 as amended. The article 63 as amended do stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: That disposes of 63. Now we come to 64.1 After 64, we move to 23 because the other one, 22 was originally disposed of under a different amendment.

MR. MWESIGWA RUKUTANA: Thank you Mr. Chairman. Considering that it is just a couple of minutes to six and considering the importance of the amendment now before the Assembly, I wish to move under Rule 16 of the rules of this House, that this Assembly be adjourned to another day *(Interjections)*- Okay to tomorrow if that be the case, to discuss this important proposed amendment. I am of the view. Mr. Chairman, that Members are actually exhausted. We cannot meaningfully debate and discuss this proposed amendment.

THE CHAIRMAN: Now, could the Hon. Member indicate to the Chair the rule under which he has moved so that we all proceed together?

MR. RUKUTANA: Rule 16 of the rules of this House.

THE CHAIRMAN: Yes, Hon. Members, the rules of procedure do allow that a motion for the adjournment of the Assembly may be moved without notice and once it is moved and seconded, we dispose of it. Now, I was not so sure that you were seconded. I can see it is seconded by many Members. Of course under normal Parliamentary procedure, if you move a motion of adjournment, you are inviting debate for at least 30 minutes on general subject, not necessarily dealing with what you are discussing, if you could check your rules but of course we are not going to indulge in that. We do not have to debate the pros and cons of this. All that happens is that the Chair is now under requirement to put the question and if it is carried, then we adjourn to the next day. If it is not carried, we continue until the Chair adjourns at any time. So that is what the rules say. This is not intended to intimidate Members, this is only intended to guide you before you make your decision. Hon. Delegates, the Motion is that we adjourn the Assembly right now for the reasons given by the Member and I will proceed to put the question and if it is carried, we adjourn to tomorrow at 8.30 a.m.

(Question put and agreed to)

THE CHAIRMAN: Hon. Delegates, in view of our decision, the Assembly stands adjourned until tomorrow at 8.30 in the morning. Thank you.

(The Assembly rose and adjourned until Tuesday, the 13th of September 1994 at 8.30 a.m)