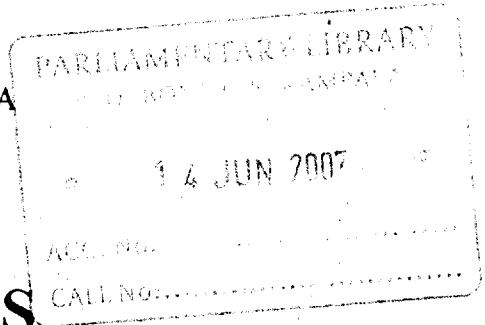




THE REPUBLIC OF UGANDA



PROCEEDINGS

OF

THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

THURSDAY, 15TH SEPTEMBER 1994

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda

[Pg 2137]

Price Shs. 3,100

Thursday 5th September, 1994.

(The Assembly met at 9.00 a.m. in the International Conference centre, Kampala)

P R A Y E R S.

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

The Assembly was called to order

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

CHAPTER FIVE: FUNDAMENTAL RIGHTS
ARTICLE 68, ADMINISTRATIVE JUSTICE.

THE CHAIRMAN: Hon. Delegates when we adjourned yesterday, we had sent or referred to the Legal and Drafting Committee a Motion seeking to create a right to information by inserting a provision or an article in the constitutional draft. It was so referred. After that we were to handle proposal for an article to provide a general derogation of power for delegation of the various rights. Now, this is where there is a bit of difficulty, there are a number of documents distributed. According to yesterday's document, we should be doing No. 29, but there is also No. 33 on the document distributed, item 33 which seems to be in the same terms as No. 29 of yesterday. What I am trying to find out is, if we had the Chairman or the deputy of the Legal and Drafting Committee, they would have given us the guidance as to the documentation we have here. Because according to the document we were using yesterday, we had done No. 28, and this morning, we should be doing No. 29 if we were to follow it logically. But a document of September, 14th first has 32 which is talking about article 53, I think this was by virtue of a reference, and then we have No. 33 which is also talking about a general limitation Clause. So it becomes difficult which one is coming first.

MR. TIBAMANYA: At the end of the second paper dated September 14th, there is a Clause to the effect that this amendment is to replace NO. 29 On the list. So I wonder whether that statement will be of any help to the Chair.

MR. WACHA BEN: MR. Chairman, thank you very much. Sorry I am slightly late. Mr chairman, I was of the opinion that we continue with what

appears as 33 and then we come back to Hon. Omara Atubo's Article 53 to summarise that sector before we move in to State of Emergency.

THE CHAIRMAN: Is that the only reference still outstanding? I think we made some yesterday.

MR. WACHA BEN: Those which were referred to us yesterday unfortunately were not handled because we dealt specifically with Chapter 3, we wanted to get it out of the way.

THE CHAIRMAN: What is the significance of that foot note on page 12?

MR. WACHA BEN: Mr. Chairman, this is in reference to the fact that we wanted to have one omnibus limitation clause. I was going to explain the circumstances under which this one came into being

THE CHAIRMAN: Okay, we shall proceed this way that we take on 33. This arises also from a decision we took that we have one general derogation, and Hon. Ben Wacha will be presenting this.

MR. BEN WACHA: Thank you, Mr. Chairman. Your circulated sheets are saying this should come immediately after Article 68, I think this is wrong. Our intention Sir, was that, this should close that sector which we were dealing with, and therefore, we proposed that it should be Article 70.

THE CHAIRMAN: Don't you think therefore, that we should-

MR. WACHA: I think you should continue with 69 - pronounce ourselves on 69 and -

THE CHAIRMAN: 68 and 69, because yesterday we had completed 67 and then there was interposed this one on information which has been referred. I think we go logically to 68 dealing with administrative justice. Did we have an amendment on that?

MR. WACHA: Sir, this one, according to my notice stays as it is.

THE CHAIRMAN: Shall I propose and put the question, the question is that, Article 68 - it will be renumbered anyway appropriately - Article 68 do stand part of the Draft Constitution.

(Question Put and agreed to)

THE CHAIRMAN: There is Article 69 which is about human freedoms additional to other rights. Hon. Ben Wacha do we have any -

MR. WACHA BEN: No we do not have any proposed amendments on this. This is an indulgent Clause.

THE CHAIRMAN: It is a useful article. Let me put the question on 69.

(Question put and agreed to)

THE CHAIRMAN: Article 69 stands part of the Draft Constitution. Hon. Wacha Ben, we go 33 on to the report.

MR. BEN WACHA: Mr. Chairman, what I propose to draw the attention of the House up on is indicated on the original circulated sheets as paragraph 29. My attention has just been drawn to some circulated paper under my names which would go outside and actually, restrict whatever I am going to try to propose to this House. Please, ignore that piece of paper which has just been circulated under my names. I am going with the proposed paragraph 29.

Mr. Chairman, permit me to draw the attention of this House to the background of this proposed amendment. When the House was considering Article 51 (2), Mr. Chairman, Hon. Wasswa Lule thought to delete the words appearing in that article which states: "*All the public interests*" which appear at the end of that Clause. This amendment, Sir, was defeated. Soon after, Hon. Sam Kutesa brought a further amendment to the Clause seeking to define and delimit the interpretation of the words "*public interests*". The only cause of debate on Hon. Sam Kutesa's amendment, Hon. Don Nabudere thought to join Clause 51 (2) and Clause 51 (3) to form only one derogation Clause 51 (3). Various views were expressed on this matter with the predominant one being that, there was a need, at the end of it all, for there to be only one derogation Clause under the provisions of human rights as stipulated in the Draft Constitution. This matter was therefore, then referred to the Legal and Drafting Committee with instructions to work out the derogation Clause and to find out where best that derogation Clause or that article should be placed in the constitution.

Now the amendment as it stands now, reads as follows, and please bear with me if I go through it

because there is some confusion. It reads: "*In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the rights and freedoms of others or the public interest*". That is Clause (1). Clause (2) then states: "*Public interests under this Article shall be determined by Parliament but shall not permit, (a) political persecution (b), detention without trial, (c), any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable in a free and democratic society or what is provided for in this constitution*". I will come to the wordings later. But I want us to be moving together.

Mr. Chairman, the amendment as it stands at the moment, it is an agreed format worked out by the three Hon. Members that is Hon. Sam Kutesa, Hon. Don Nabudere, and Hon. Wasswa Lule together with the legal and Drafting Committee amending and enlarging Article 51 (2). Now the first part that is Clause (1) brings out specifically the provisions of 51 (2). Clauses (2)(a) and (2) (b) as proposed in the amendment incorporate the views expressed by Hon. Sam Kutesa in his attempt to define what should and what should not constitute "*public interest*". Clause (2) (c) in the amendment is to be incorporated into Article 59 (3).

Mr. Chairman, various views have been expressed in the legal circles about this proposed amendment, and I think it is only fair that I should present these views to this House. I am doing this, taking into account the importance of this proposed amendment and importance it will play in the interpretation of this Constitution in respect to our human rights provisions. First is the issue of what is "*beyond what is acceptable in a free and a democratic society*". Before I attempt to define this phrase, let me inform Hon. Members that this phrase is not new in our constitutional history. It is used, if Members will recollect, in nearly the same format as under section 26 (c) of the 1962 Constitution and Article 17 (c) of the 1967 Constitution.

The format as it appears here seems to have been borrowed from section (1) of the Canadian Charter of Rights and Freedoms. The same provision also appears in various other constitutions. I say they appear almost in the same format as the 67 and 62 Constitutions under what we call the Westminster models of constitutions, those constitutions which were given to our Independent states and in the early 70s. The duty of having such provision elsewhere is that, it makes it easy for the courts to interpret it. The

courts in Zambia and Canada have done so. It has just been held that in determining what is reasonably justifiable in a democratic society, the test should be an objective one. That is what is justifiable in any democratic state. Not one particular democratic - one particular state which claims to be democratic. Now the essence of democracy has been defined as "A free society in which government is based upon the consent of the citizenry". The duty again is that, the phrase shifts the burden of proving the need for the delegation of that right away from the beneficiary of that right. That one is one basic issue which has been raised in our legal circles.

The second issue which is of paramount importance too, is as to whether the issue of interpreting "public interest" should be left upon Parliament or should be left in the hands of the court. Mr. Chairman, you will notice that Clause (2) of the proposed amendment states, "public interest under this article shall be determined by Parliament but shall not permit..." There is a strong feeling, and I want this House to come out on it clearly, that it should read: "Public interest under this article shall not permit..." Mr. Chairman, this is an important matter because views are that interpretation of the constitution should be left in the hands of the courts, and not be limited by what has been prescribed by Parliament.

Lastly, Sir, in discussing this amendment, I urge Members to look at the principle behind. The principle being that, there should be one limitative Clause in our human rights provisions, and that this limitation Clauses should not be littered all over Chapter 5. This is important for interpretation. It is possible that even this one limitation Clause could be subjected to others. But that is a matter of drafting, and I urge Members to leave this to the technical committee. I also urge Members that, it is possible, as has been indicated to me by Hon. Omara Atubo that, even the wordings of this new Clause could be improved upon. We are also conscious of this fact, Mr. Chairman, and I urge Members also to leave this to the Technical Committee, not even to the Legal and Drafting, but to the Technical which could improve upon it. Let us deal with the principle behind, that is that there should be one limitation Clause and as to whether this limitation Clause should be left in the hands of Parliament or to the hands of the court, other Hon. Members, I think, would elucidate on this matter - Hon. Nabudere, Hon. Sam Kutesa if he is there, but I think this is the

basis under which we proposed this new amendment. Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Hon. Ben Wacha for this very effective presentation of this rather tricky situation. The Motion now is that, we adopt as a general derogation clause, that Clause in the terms and on the lines as presented by Hon. Ben Wacha and appearing in the report of the Legal and Drafting Committee on item 29, that is the wording that is before us.

PROF. NABUDERE: Mr. chairman, I have nothing to add except to say that - to move that we in fact adopt this article as proposed by Hon. Ben Wacha. There was considerable debate already on this matter, and I do not think we should reopen the discussion. Thank you.

MRS. MUKWAYA JANAT: Point of clarification. Mr. Chairman, in Hon. Ben Wacha's presentation on item No. 2, I wonder whether I heard him properly, I heard him suggesting that, this Clause would read "Public interest under this article shall not permit" leaving out the others. Is that right?

THE CHAIRMAN: No I think - Hon. Ben Wacha, I think would you clarify, I think you did not say everything.

MR. BEN WACHA: I was bringing out the various views which have been expressed. This is a tricky situation, my own considered view is that, interpretation of "public interest" should be left in the hands of the court. That is my considered opinion, and an opinion which is being shared by other Learned Friends. But it is a policy matter and that is why I have brought it to the House, Mr. Chairman. Whether it should be determined by Parliament, or we delete the word "Parliament" and leave it just to for the courts to interpret.

THE CHAIRMAN: Hon. delegates, this matter was extensively discussed here and we made this reference more or less on specific grounds to marry various views which we developed on the Floor. I do not think we should re-open debate particularly in view of the very able presentation made by the Hon. Member. I would like to suggest that we move and declare ourselves on it.

MR. ERESU ELYANU: Mr. Chairman, although I am not ready to open up a debate on this derogation

clause, I would like to bring to the attention of the delegates here present that, this amendment should bring us into the understanding that, while we may accept it in its present form now, we should also consider, in our minds, the question of separation of powers. If for example, in Clause (2) of the amendment which reads "Public interest under this article shall be determined by Parliament" we are actually giving the legislature the upper hand in determining public interest. On the other hand, it is tying up the hands of the judiciary in determining what "public interest" is. So, for the purpose of interpretation and separation of powers, I think and I strongly believe an amendment should have been made whereby Parliament does not have to determine public interest but the courts be the ones to determine public interest so that, in the process, if someone's public interest - whatever his rights - have been violated other than those which have already been mentioned as political persecution and detention without trial, then the courts will be in a better position to help that person when his rights have been violated. For example, we have a situation here where there was a case, someone's house for example was taken away in public interest, and has not yet been mentioned as one of these. How would this fellow be covered if Parliament is the fellow to interpret a situation like that? I think we should remove Parliament here and instead have the courts to determine public interest. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Hon. Nabudere, you want to clarify something.

PROF. NABUDERE: I think what is meant here really, Hon. Members should not take this matter too far. What is meant is that Parliament will make a law in which it stipulates in which circumstances public interest is interpreted or rather in general terms what public interest means. But in the final analysis, it is the Courts which will determine whether that is the correct interpretation of public interest. Because matters will come to the courts finally, and the courts will then come in to interpret whether that is the meaning that Parliament attached to the words "public interest". So courts will still be involved in this matter.

MRS. MWONDHA FAITH: Thank you very much, Mr. Chairman. When Hon. Ben Wacha was talking about leaving out the provision of Parliament making the law, he was saying the whole question of interpretation of the constitution should be left to the courts. But I think this has been the procedure, and

with or without the Parliament making the law still, the courts have to interpret the situation as it is and we have always had what we call Case Law. And if this business is left out just like that, not so many people of our country know the process of litigation to allow everybody whose rights have been infringed, to go to court in order for the courts to interpret the law. So I feel that, if we leave it out, we shall be plunging this country into chaos. Thank you

MR. WASSWA LULE: Thank you very much, Mr. Chairman. It is my wish that we should open this debate up again. Because once there has been an attempt to match the three different views, you will notice that in the initial derogation Clause, there was only one opening, that of public interest which has, to a certain extent, been constrained to the extent of political harassment and detention. But then if you look at it carefully, you find that there are two other openings now. One, the determination by Parliament of public interest. There, we as an Assembly, we abbreviate the responsibility by not determining what public interest is ourselves. Two, the interpretation of what is acceptable in a free and democratic society. Similar to public interest, that too is a phrase which is subject to interpretation or misinterpretation as our leaders in the past have been seen to interpret. I think it is a very important clause, this limitation Clause, because it determines whether or not all those rights which we have spent days debating, whether they are substantive or whether they are not. So, I do not think we should leave the question like that. Another thing about the amendment as proposed, as I had stated in the previous debate, I had two amendments. My original amendment was split in two and the second amendment was the one that was supposed to determine the limitation of *(Interruption)*

THE CHAIRMAN: So in summary, you are saying you do not agree with the report of Hon. Wacha?

MR. WASSWA LULE: Yes, Mr. Chairman.

THE CHAIRMAN: So he was telling us lies.

MR. WASSWA LULE: No he was not telling you lies, but -

THE CHAIRMAN: He said that this format has been arrived at with the parties concerned. You are now re-opening debate and saying, you disassociate

yourself from the report of Hon. Wacha. So, in other words we wasted our time.

MR. WASSWA LULE: Well, I do not agree with the amendment as it stands in its entirety.

MR. GEORGE MASIIKA: Thank you, Mr. Chairman. I think all Members do know that every time Parliament makes a statute, it takes public interest in consideration. What article 68 Clause (2) is saying is that, public interest shall be determined by Parliament in the first instance, and I think that is superfluous. Because this interest is taken into account every time a statute is made. Now, if it is left as it is here, that public interest under this article shall be determined by Parliament, the first interpretation is that if the issue goes to court, then court can wash off its hands and say we are not determining this. That is the first impression that one gets, and I think that would be very wrong.

And I would agree with Ben Wacha's caution on this that we delete the words be determined by Parliament, so as to leave Article 68 Clause (2) to read "*public interest under this Article shall not permit...*" Now the other enumerate parts are what we can now foresee as probably derogating the Human Rights Chapter. But the Parliament will definitely, in its wisdom, pass other statutes and the Parliament will, in doing so, evaluate the public interest. We do not have to tell Parliament to consider public interest. It will definitely do so, and that will leave the courts with a free hand not being intimidated by a phrase that the Parliament has to determine public interest, and that mighty derogate the enjoyment of these rights by the public or the citizens simply because the court can wash off its hands and say it will not deal with the determination of public interest. So to remove the doubt from it, Mr. Chairman, I would urge the Members to consider deleting these other few words to let the phrase be very clear.

THE CHAIRMAN: Could I be clarified in view of that proposition? Supposing Parliament was to pass a law or you are saying that, Parliament has unlimited powers therefore we do not have to mention that Parliament can pass laws that have the effect of derogating from the rights granted by Article 5. Or are we saying that we have to mention it? This is, I think, a narrow area where we have to make a determination.

MR. KITARIKO: My simple understanding of this draft is that, public interest, Parliament is mak-

ing a law derogating the rights in Chapter 5, it shall not make a law which derogates from political persecution and detention without trial, but all the rest of the area is open to Parliament, but those will be exclusively not touched by any law made by Parliament. That is what I understand by this draft.

DR. KABERUKA: Thank you, Mr. Chairman. Having listened to the views of experts, I have a view of one of the assessors and we realise that what is important is that public interest should be defined by laws set by Parliament and that this public interest should not include political persecution and detention without trial. So having realised that those are three things which we should cater for, in my own lay man's expertise, I have come up with something which I consider that should replace what we have here. And it reads; "*In the Enjoyment of the rights and freedoms described in this Chapter no person shall prejudice the rights and freedom of others or the public interest as determined by laws made by the Parliament to the extent acceptable in a free and democratic society, provided that such laws shall not permit political persecution or detention without trial*". So, Mr. Chairman, I think that would be a better formulation than what we have here. Thank you. (Applause)

MR. RINGWEGI: Thank you, Mr. Chairman. Mr. Chairman, I think when this matter first came on the Floor, most Members were very, very apprehensive of the removal of the phrase, "*public interest*". I think that is what really caused most of the concern. But now that the amendment has come back, and this particular phrase has not been removed, there has been a very able attempt to limit what could be foreseen as possible exception to that "*public interest*". I do not see any reason why we should really try to labour this point any further. The position, Mr. Chairman, is that, Parliament as will be provided for under this constitution, is a Legislative organ or a legislative institution. I hope we are not trying to make any attempt to also provide to what extent Parliament will legislate. I think once we establish an institution called a Parliament, and bestow upon it the power to legislate, we should therefore, stop there, we should not also attempt to say, Parliament will legislate on the following matters. If, Mr. Chairman, we are going to provide under this limitation Clause, situations in which Parliament can legislate over matters of fundamental human rights, how to limit these fundamental human rights, we shall be so definitive, and we shall not be catering for the future, we shall be curtailing the work of Parliament.

The point, Mr. Chairman, I want Hon. Members to understand is that, whether or not, we provide in this article that Parliament will legislate in this respect, Parliament already has the power to legislate. So, it is better we leave the interpretation of what may be considered to be "public interest" in the hands of the custodian of law and justice, that is the courts of law as will be established under the constitution. Mr. Chairman, I therefore, implore Members not to be so pessimistic and not to be over suspicious about the good intentions of this amendment here. The public interest is catered for and let us leave the interpretation to the courts of law. We have no reason to suspect or doubt the ability of the Courts to interpret whatever comes up as and when it comes in the interest of public interest. Thank you, Mr. Chairman.

COL. OTAFIIRE KAHINDA: Thank you, Mr. Chairman. Mr. Chairman, I beg to express my reservations about the spirit in which this amendment seems to be introduced. This amendment seems to ignore completely our yesteryears. It also seems to ignore the essence of our being here. We have a history of turbulence, we have had a history of anxiety and missed opportunities. When this amendment seeks to remove the words "National Unity" and "National Interest", I am at a loss.

THE CHAIRMAN: But it is not, it was the original Motion which was moved by Hon. Wasswa Lule which sought to remove the words "Public Interest". We had a very wide ranging debate on that, and views were expressed strongly that public interest is necessary because of certain situations. Public health, public order and so on and so forth. But fears were expressed strongly that possibly, public interest could be used by the government of the day and intrude into political rights by detaining opponents and persecuting them. So we decided that since there were these competing interests which have been expressed on the Floor of the House, let us refer this matter to the Legal and Drafting Committee together with the sponsors of the various amendments i.e. Hon. Wasswa Lule, Hon. Sam Kuteesa and others, to work together with the Legal and Drafting Committee and come back with the formulation which takes into account not only the need to maintain public interest but also the need to impose restrictions that do not permit the government of the day to intrude into political rights or persecuting opponents.

The formulation that has come starts with a statement in one, which will be a general application to all rights under Chapter 5. You are free to enjoy your rights but in doing so, do not hinder the enjoyment of rights by others. Or do not injure the public interest. Two, is saying okay, we agree there is need for public interest but that need for public interest must be circumscribed to the extent that one; laws will be passed which could determine what constitutes public interest by Parliament. But in doing so doing, Parliament should not provide laws that go towards political persecution, detention without trial, or unreasonable use of legislative power to unnecessarily limit the right to enjoy your rights specified in Article 5, and that is (c).

So, what now you are saying - public interest, it does not, it in fact protects it, but only except those areas which could be abused because of political situations. That is how I understand this amendment.

COL. OTAFIIRE KAHINDA: Correct, Mr. Chairman, and I was coming to that. The amendment as it stands, talks of enjoyment of rights and freedoms prescribed in this Chapter and it goes on to say "...no person". But this amendment does not take care of a group of persons.

THE CHAIRMAN: No, I think let us sort out that one before we go very far. The interpretation of laws in Uganda - and even I think the constitution does provide for its own interpretation, if it does not adopt the common law approach which has been codified in law, called Interpretation Acts, where a reference is made to singular, it shall be read as including plural and vice versa. So that does not arise.

COL. OTAFIIRE KAHINDA: Thank you, Mr. Chairman -

THE CHAIRMAN: Hon. Kaberuka, you made a proposition but in terms of substance, it does not differ materially from what is on the Floor. Let me hear from the Chairman of Legal and Drafting Committee. Do you think that the text read out by Hon. Kaberuka materially alters the information - I mean the format as we have it here?

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. I definitely agree with you that it does not materially change the substance which is contained in this general derogation. I wanted, Mr. Chairman, to assist Hon. delegates in understanding why in

Clause (2), we dropped both Parliament and Judiciary. The person's rights may be affected not only by acts of Parliament, but they may be affected by administrative action taken by the executive or indeed by the interpretation given to the constitution by the courts. Therefore, if you simply limit the limitation to Parliament, you are leaving a loop hole for administrative tribunal or indeed organs as well as the judiciary -

THE CHAIRMAN: Now which texts are we debating now?

PROF. KANYEIHAMBA: I thought sir, that people were insisting that we should either -

THE CHAIRMAN: You see we have two texts here under 29, there is reference to Parliament and then there is one under 33 which does not so refer. Correct? Now the Mover specifically went back to the original draft, rather the one which came as a formulation under 33. Hon. Ben Wacha is with us and can confirm that.

PROF. KANYEIHAMBA: Mr. Chairman, then I am sorry I am a bit lost because I thought that this is a matter which had been referred to the Legal and Drafting Committee and what Hon. Ben Wacha reported is the composition the Legal and Drafting Committee presented. This was my understanding so, my reference as to the what the Legal and Drafting Committee presented to this august House was - rather than going back to the original -

THE CHAIRMAN: No, no. You sent us a report here from the Legal and Drafting Committee of September 10th, and on that report we have paragraph 29 which is the format we are discussing now. But we also had circulated a document dated September 14th, which has paragraph 33, and Hon. Ben Wacha, in his presentation said that he was using the report of 10th September, and the formulation under that in preference to what was circulated to you. So, you are talking to the text of 33 when actually they are debating the text of 29.

MR. BEN WACHA: Mr. Chairman, when I was talking, my attention had not been drawn to the present text dated September 14th, but the content of the text of September 14th is actually the basis of my argument for removal of the words "*determined by Parliament*" because that was what we had agreed upon in the legal and drafting committee. But I

thought that people were still talking in reference to what appeared in paragraph 29. So I was at pains to explain that, that particular phrase should be removed because of the reasons that I gave to the House. If the Members are having this particular text dated September 14th, which I understand was in the pigeon holes but I did not go there I just came here straight because I was slightly late. So please, confine yourselves to this, and ignore the content of the other one which is numbered 29. There will be confusion that so many papers are coming at the same time.

THE CHAIRMAN: It would appear that the Deputy Chairman and Chairman are saying that we take the text of 14th September which as you see only says, "*Public interest under this Article*" that is (2) without going to the question of who shall determine it. It only talks about public interest under this article shall not permit political persecutions, detention without trial, and any limitations and so on and so forth. And the only difference is the omission of the reference to Parliament.

MR. KASUJJA: Thank you very much, Mr. Chairman. We have debated this derogatory Clause extensively. The issue of Parliament comes in just because of Article 59 Clause (3). That is the way I look at it. If we end up at "*public interest shall not include*", then Clause (3) of Article 59 will not be included in that. That is the way I understood it to be and I think we stick to what is presented not on what this 33 as submitted as on 14th. If you want to capture the idea contained in Clause (3) in 59, then the Parliament comes in.

THE CHAIRMAN: But the argument is proceeding that you did not have to specifically mention Parliament here. Because once you say that people can enjoy their rights provided they do not interfere with others in enjoyment of theirs, and the public interest and you say public interest under this article shall not permit political persecution or detention without trial, then you are saying that Parliament has all field of play except in this one with regard to making provision for public interest in various laws, and so on and so forth. That was the argument of Hon. George Masiika, and I think the argument of some other Member so that, the argument is that, you do not have to specifically say it is Parliament that will determine because you can leave it open because parliament always makes laws anyway. But it should not make laws that go towards political persecution or trial or detention without trial.

MR. KATUREEBE: Thank you, Mr. Chairman. The way I understand Mr. Chairman, and arising from the contributions of and concerns of members the last time we tackled this was that, in the past, this phrase “*public interest*” has been so abused by governments that a minister wakes up one morning and detains you and says it is in the public interest. And there was concern by Hon. Kutesa and others that this time we should have a specific body, a representative body that is a custodian of the public and that is the representative of the people in Parliament. The representative of people in Parliament to define this thing “*public interest*”, other than leave it to the whims and concerns of the governments - *(Applause)* - so that the representatives of the people in a representative organ called Parliament define what is public interest”. But define it in such a way that under no circumstances will it include detention without trial or persecution of political opponents. That was the way I understood the concerns of this House. And when we met, the Movers of the various amendments, Hon. Sam Kuteesa, Hon. Nabudere, Hon. Wasswa Lule, that was the guiding principle under which this phrase Parliament came in, and as indeed Hon. Kasujja has explained, we had wanted to move that derogation Clause taking into account also 59(3) which again you are talking of Parliament making laws and so on.

This is a special thing in special circumstances given the history of this country, and I think it should be reflected. We would not be bringing out what we intend to do if we leave out the word “*Parliament*”. There is concern that you are limiting the interpretation of the law by the courts. I do not see this that the courts still have residual power, at any time, to interpret this whole constitution. Any provision of this constitution can still be interpreted by the courts, and as you know, Mr. Chairman, one of the things that a court will take into account is what was the intention of the legislature, that is one of the things that are taken into account when they are interpreting the statutes.

So, Mr. chairman, I would urge Members that, we reflect on the debate we had last time and the concerns arising from our history, and then we retain this text as it is. Thank you. *(Applause)*

THE CHAIRMAN: Now this raises an interesting situation. We have two texts before us, and the signal coming from the Legal and Drafting Committee is that, it is not unanimous, they are those who are

saying, there was decision not to include Parliament. Then Hon. Katureebe says it was deliberate. Hon. Nabudere found no difficulty with the text as it was read out initially and he is one of those who helped with the formulation. Now we have to make a decision, first and foremost, which text are we having before us? I think here, the House is being put in difficulty because of the failure to have a common position in the Legal and Drafting Committee. So now I do not know how to proceed actually because I can hear voices from the Floor saying 33 others saying 29 and I do not think we can have both.

MR. KAVUMA (Kyadondo South): Mr. Chairman, I think if I heard Hon. Wacha correctly when he was taking us through the provisions of these proposals, he at one stage said that there is a paper circulated dated 14th and he urged us to go by amendment No.29 and, Mr. Chairman, it seems having listened to what has been going on on the Floor, it seems that may be the House will benefit more if we went with what is amendment 29 then we reflect on what our fears are as the CA and we come to a decision because we were worried that this Clause is subject to abuse, people could be detained without trial and nobody wants that. We were worried that people could be politically persecuted and nobody is willing to see that introduced in our politics and our laws. I think these were the areas where we had asked our colleagues to assist us to come out with a format that preserves our freedoms and protects also public interests but not going into the field of persecuting a person because of his political beliefs or causing a detention without trial. Sir, I beg to move that we proceed under 29 and we resolve the matter.

THE CHAIRMAN: Anyway let us proceed this way. Strictly now on the rules and that is, I think, only we shall get out of this first. We shall apply the rules strictly. Hon. Ben Wacha moved a Motion based on 29 and that Motion was seconded in those terms by one of the sponsors of the previous amendment and the debate that ensued was on that basis of that 29. It is only later on when the Chairman of the Legal and Drafting Committee was making observations that it came to unfold that actually, this other text of 14th was the one he was talking to and the Chair drew his attention to the fact that all along we have been talking to 29. Fears were expressed on the text of 29, Hon. George Masika and others said that the reference to Parliament is superfluous. That position, of course, is arguable. Hon. Kaberuka

attempted to bring another formulation which would have negated the present one but not the substance. Now, what we do is let us take the Motion as it was before us and was being debated. Fears have been expressed about the need to include the reference to Parliament. The Assembly can cause an amendment to be moved and we debate that amendment, whether or not we delete the reference to Parliament and dispose of that and then go back to the original if it is the wish but otherwise, if there is no wish to do so, then we debate and pronounce ourselves on 29 as it is. That is strictly applying the rules as they are because the Motion was already before us and no amendment has been made to give effect to that. Hon. Masalu Musene.

MR. MASALU MUSENE (Manjiya County): Thank you very much. Mr. Chairman, in view of what you have stated, I now formally move a Motion to delete the words "*shall be determined by Parliament*" from the text of 29 so that Clause 2 reads that "*public interest under this Article shall not permit political persecution ...*"

Mr. Chairman, in moving this amendment I wish to draw the attention of the Hon. Delegates to Article 132, Sub-clause (2) and (3). Mr. Chairman, this Article 132 provides that "*Subject to this Constitution, Parliament may make laws for peace, order and good government with respect to any matter*". (3) "*Parliament shall make laws for the well being and development of Uganda in accordance with the provisions of this Constitution*". My argument, Mr. Chairman, is that there is no need of including "*shall be determined by Parliament*" under 129 because those powers are already there, they are provided for under Article 132 which is of course not passed but we shall debate and I have no doubt that it can be catered for under that provision.

Secondly, Mr. Chairman, if we leave public interest to be determined by Parliament other than courts, then we shall be going back to the past situation whereby Parliaments or governments in the past have abused this derogation of public interest because past experience, Mr. Chairman, has shown that public interest acts in favour of those in the government so that they use it to fight opponents. In making the Constitution, Mr. Chairman, we should focus on the future and not now. So arguments can come that we now have a good government, full of sanity and meaning well for the population but then, Mr. Chairman, what about the future? How can we

predict or anticipate that no dictatorial government will emerge in future and misuse the public interest provision? So my argument, Mr. Chairman, is that public interest should not be left to Parliaments to determine but it should be determined by courts but then the Parliament has the power under 132 to make any laws for the good order or whatever but then let it be left to the courts of law to interpret "in public interests". I therefore, Mr. Chairman, move that the words "*shall be determined by Parliament*" be deleted from Sub-clause (2) on the text of 29 so that the matter will be left to be determined by courts in future. I beg to move, Mr. Chairman.

MR. WANENDEYA (Budadiri East): Mr. Chairman, I fully support the Motion as moved by Hon. Musene Masalu Mr. Chairman, as far as public opinion is concerned. From our history, we have seen governments ganging up, as it were, with parliamentarians sometimes to pass laws which are not in public interest. Mr. Chairman, the point I have given over here, currently, you find that we have borrowed heavily but the money may be subject to question as to how it was used and yet one would say that it was done in public interest. Therefore the courts should be left to interpret in any manner which they think is in public interest. As Hon. Musene Masalu put it, Article 132, I am sure or I hope that it will be passed and we better pass it because then it deals with the general principles of good governance and public interest but just in case, if we specify it as under 29, we are literally tying, possibly the hands of courts so that some dictator can say well, this is not a matter for the courts to interpret but it is Parliament, so you mobilise Parliament to pass laws which are not in the best interest of the country. Therefore, Mr. Chairman, I fully support that 33 should be the Article which should be included. The only thing that I would add in 33 under 2(a), Mr. Chairman, is to include the word "*intimidation and persecution*". Mr. Chairman, the reason why I say this, with all due respect, is that somebody may come up and do the intimidation and we have seen this happening when somebody is in government but it would be better even to define the word "*intimidation*" and I have the text which should be included in 286 under Interpretations. Thank you, Mr. Chairman.

MRS. HOPE MWESIGYE (Kabale District): Thank you very much, Mr. Chairman. I beg to oppose the Motion, Mr. Chairman, on the following reasons. In my opinion, I think we must empower Parliament to make laws which laws will be subse-

quently interpreted by courts. It is not true that when we add "*Parliament*" that means that it will be Parliament to interpret laws. Parliaments have never and will never interpret laws. It is the courts that interpret laws. Secondly, Mr. Chairman, this Parliament will be elected by the people and those Members of Parliament will be peoples representatives. The Members who are arguing that the government can always manipulate them, we have a provision within this Constitution, the right to recall representatives. I believe that if they see their representative is not adequately representing them, they can recall that person other than let him or her be manipulated by the government.

Another reason is that if we do not empower Parliament to make these laws, it will tantamount to all the cases being brought in public interest or against public interest to be constitutional cases and we know, Mr. Chairman, that constitutional cases must be tried by High Court, they must be tried by at least three judges and to me, that is tantamount to actually denying our people access to justice. It is on the basis of those reasons, Mr. Chairman, that I beg to strongly oppose the Motion. I thank you.

MR. ATAMVAKU (Arua Municipality): Thank you Mr. Chairman. Mr. Chairman, I beg to support the Motion of amendment, that is the Motion being debated now. Mr. Chairman, I believe that there are three dimensions to the debate which are being overlooked. There is the issue of rights - human rights as being enjoyed and protected. Secondly, there is the dimension of public interests or national interests in relation to: (1) affirmations, (2) abuses. Mr. Chairman, the way I look at this Motion, it is my humble opinion that public interest of necessity is not determined by Parliament. At a given time, public interest may be determined by the prevailing or the predominant civic mood and civic order. Mr. Chairman, I beg to explain that a bit in detail.

Mr. Chairman, we know that in a democratic order, Parliament is elected by the people. We therefore assume that Parliament will always work in the interest of the people. We also assume that Parliament will always pass laws taking into consideration the public interests. However, Mr. Chairman, history is abundant with examples of democratically elected Parliaments at times standing at variance for the public interests or public order. Therefore, Mr. Chairman, in any event of the prevailing mood within the Parliament being at variance with the

general and civic popular mood, it is possible that Parliament can actually make laws that impinge upon the rest of those people who had after all elected the Parliament. This has always happened in history. In any case, Mr. Chairman, one of the grounds for Ugandans to go into any expensive exercise of making a new Constitution is that the elected Parliament in 1967 made a vast law at variance with the general interest of the population. That example is so fresh that we should not forget. Therefore, Mr. Chairman, it is in view of this that I submit to say that "*public interest under this Article shall be determined by Parliament*" is to create a situation in which the population shall elect a Parliament which, when at odds with the population or with the electorate, will turn around to bury its own tail. In other words it will turn around to abort the democratic order that have brought that particular Parliament in place.

For that matter, Mr. Chairman, I will therefore say that public interest must not necessarily be determined by Parliament. We must take into consideration a civic order, a prevailing mood which may arise and start at variance with a particular Parliament otherwise the provision of the so called right to recall will actually be unwittingly eroded by this very provision.

Mr. Chairman, I would therefore urge that regarding the second variance of public interest, we have noted that earlier on an amendment was moved to delete the question of public interest, the question brought the question of national interest as well but this particular amendment takes into consideration the fact of public interest or national interest. However, public interest has its own two subvariants, affirmation or abuse. Here the Motion affirms that there is actually abuse of public interests. Sometimes laws have to be made in such a way that public interest has to be protected but again the amendment is so comprehensive that it takes into consideration the possibility of the abuse of public interest. More often than not, government has this public interest, how? Whenever a section or an individual expresses a view that is at variance with government interests, those who rule, those who are in power say that for public interest, we detain you. In political persecution it is often baptised in the name of public interest. Examples are abundant. Above all, the detention without trial was legalised in order to treat a legal connotation to what was actually political persecution. If therefore, we are not going to reverse the clock of history, Mr.

Chairman, we must uphold this amendment because here, public interest is being affirmed and being protested from abuse. I am afraid - *(Interruption)* -

THE CHAIRMAN: I think you have made your point Hon. Atamuvaku.

MR. ATAMUVAKU: Yes, Mr. Chairman, I am afraid I want to conclude but there is a very important point I want to make here.

THE CHAIRMAN: No, but you are taking longer than the time allowed.

MR. ATAMUVAKU: Alright, Mr. Chairman, without dissenting from your ruling, I will say that the fears we have over this amendment, I am sorry to say, is arising or arises from a certain undue esoteric reading we are making into these amendments. Thank you.

MR. KASOLE BWERERE LWANGA (Buwekula County): Mr. Chairman, I beg to oppose the Motion on one very strong reason. I am not ready to surrender peoples powers. Mr. Chairman, peoples power is vested in Parliament. We are here struggling, wasting time, wasting money because we want to give the people powers. We won't surrender powers to any other body in Uganda. People who will have been elected by the people themselves must have powers to take a decision on very important issues like this one. Therefore, Mr. Chairman, I do not understand Hon. Members who seem not to believe, seem not to be convinced with the new Parliament that we intend to put in place after making this Constitution. We cannot say anybody that will not have been elected by the people will have to take a decision on very important issues. Mr. Chairman I oppose the Motion.

MR. ONYOK-ETUKU (Moroto County): Thank you very much, Mr. Chairman, Mr. Chairman, I beg to support the Motion. Mr. Chairman, I am not - *(Interruption)*. Mr. Chairman, the words, "public interest" being left in the hands of Parliament would tantamount to going back to what has happened to us in this country. Now, who determines the public interest? It is the people. And whose interest? It is the people. When you elect a Member of Parliament, he represents the people. When he takes a decision it is for the people but then when these Members of Parliament are elected they go together, they are there to represent the people, at the same time, they

are representing the interest of the government in power - *(Interruption)*. In so doing, Mr. Chairman, I would like the Hon. House to know that Parliament sits to make laws and the laws that guide the government but at the same time the laws that protect them wherever they are.

Many governments have taken decisions in the public interest while the interest is not actually public but the people who are in that government, that is the top brass. What am I saying? When a Minister dismisses an employee, he dismisses an employee in public interest but that interest is the Minister's interest because the employee is disturbing him. This one is common. Mr. Chairman, I am saying we should not leave the citizens of this country in the hands of people to determine their right. If we have provisions that should affect the citizens it should be written down that such and such are not required but to say that Parliament should determine - we are not sure of tomorrow - are we going to have a Parliament in which everybody will be elected? In twenty or thirty years time, we may have some people who will take the government by force of arms. - *(Interruption)*. Mr. Chairman, I am saying that I do not agree to leave these laws to be made by Parliament because the provision of Article 132 is enough to cater for all provisions about public interest. Thank you, Mr. Chairman.

MR. LUBEGA WAGWA (Butambala County): Thank you, Mr. Chairman. Mr. Chairman, I support the amendment as per September 10th *(Interruption)*.

THE CHAIRMAN: No, no. What we are debating is a Motion by Hon. Maselu Musene (Manjiya) that we take the one under 29 but that we delete the words "shall be determined by Parliament" and then we read the rest as it is.

MR. LUBEGA WAGWA: Mr. Chairman, I oppose the amendment because of the following reasons. One, it seems that the people here, the Hon. Members have already lost confidence in the Parliament which is going to be put in place. That is wrong allegation. The people have powers to make laws through Parliament. It is, only Parliament that will put in place the laws we are trying to put in this constitution so we cannot leave Parliament. Two, the other gentlemen who supported this ideal, Hon. Wanendeya and his friend referred us to Article 132. Now if we go on referring some of the issues like the

power of Parliament to determine the interest - the public interest, it is going to make it very difficult for the people to understand the Constitution which we are trying to put into place. I therefore strongly oppose this amendment which has been brought by Hon. Ben Wacha. Thank you Mr. Chairman.

MR. ONGARIA (Tororo Municipality): Thank you very much, Mr. Chairman. At last I must thank you that you have seen me. I have been putting my hands several times but -

THE CHAIRMAN: You are not the only one who has been putting up your hand anyway.

MR. ONGARIA: Mr. Chairman, first of all, I want to add my voice to that one of Hon. Wagwa. I want to emphasize one point that the role of the Parliament all over the world is clear. Their role is to make laws. If you are going to abrogate this responsibility from the Parliament to interpret the laws as far as public interest is concerned, we shall have actually lost our responsibility and our interest in Parliament. I therefore strongly emphasize that this role of interpreting public interest should be left to Parliament and the courts should be responsible for determining whether somebody who has broken the law as interpreted by Parliament is guilty or not. I want that role to be left to the Parliament to determine whether public interest has been done properly or not but the courts should be responsible for determining the guilt or not of a person who has broken that law which has been made by Parliament. So I oppose the amendment. Thank you very much.

MR. KOMAKEC (Aruu County): Mr. Chairman, the point I wanted to clarify or to give information to the last speaker unfortunately he has finished but he made the point that it is up to Parliament to interpret the law, I think what he means is that it is Parliament to make the laws but it is up to the court to interpret it.

THE CHAIRMAN: Okay, I think that is correct. Now Hon. Delegates, I think let us determine which text we take. Actually, that is the essence of this, whether we are taking the 29 or 33. Now, the Motion on the Floor by Hon. Maselu Musene is that the Motion as moved and was on the Floor being debated be amended by deleting (2), the whole of it and then inserting in its stead the following "*Public interest under this Article shall not permit - (a) political persecution, (b) detention without trial-, (c) any*

limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable in a free and a democratic society or what is provided in this Constitution." That would replace the existing Clause (2) as proposed and therefore now I will put the question.

(Question put and negated)

THE CHAIRMAN: Now, Hon. Delegates, we go back to the text as it was and in view of the wide ranging debate, do we have to re-debate this one? I think let us go and determine whether we agree with the amendment as it is or we do not. There are proposed amendments now coming from the Floor. I will give the Floor to Hon. Atwoma Okeny, he sent in a written amendment to me here. Now we are debating the Motion as originally moved.

MR. ATWOMA OKENY (Chua county): Mr. Chairman, my trouble with this amendment is the limitation clause which I enumerated from (a), (b) and (c) and I was of the opinion that in this country also we have experienced some summary executions and I would pray this House to insert (c) immediately after (b) to read as follows -

THE CHAIRMAN: Are you suggesting that the existing (a) should remain and become (d)?

MR. ATWOMA OKENY: Yes, that is right. So a new (e) should be inserted after (b) to include: "*All extra legal, arbitrary and summary executions*". Because, Mr. Chairman why I brought this in, to be specific about it, this country has suffered a lot of this kind of execution and we may be having another government which will come out to take all the laws in their hand and carry on with these executions. So I would think that probably these limitations, if we insert this in, at least that will give some confidence to the people, of our Constitution.

THE CHAIRMAN: But is that seconded? Hon. Atwoma Okeny you have not received secondment so we cannot give you the Floor. You have been seconded by Hon. Komakec. What the Hon. Atwoma Okeny is suggesting is that we insert immediately after paragraph (b) a new paragraph to say "*Public interest, shall not permit all extra legal, arbitrary and summary executions*". Of course the Constitution as already we have pronounced ourselves on the question of the circumstances in which life may be taken in some earlier

Article, I cannot make a specific reference to it and I do not think that this Constitution has permitted - will permit extra legal, arbitrary and summary executions. I think there was a well written provision somewhere. I would really urge that Hon. Atwoma Okeny does not insist on this one.

MR. KOMAKEC (Aruu County): Mr. Chairman, following your explanation, if it is provided somewhere else, I think it is not necessary so we withdraw that particular one.

THE CHAIRMAN: It is, okay thank you.

MR. WAGIRA (Kibuku county): Thank you, Mr. Chairman. Mr. Chairman I take the Floor and beg to move an amendment to the effect that the present text as we have - I seek to delete Clause (2) and in its stead insert that "*Public interest under this Article shall not permit -*

THE CHAIRMAN: No, we shall not allow that, we have just debated a similar provision and for you now -

MR. WAGIRA: Mr. Chairman, I was mistaken I am not seeking to delete that one -

THE CHAIRMAN: No but you have just started by saying you want to delete (2).

MR. WAGIRA: I am sorry, Mr. Chairman, it was a slip of the tongue. I just seek to delete from Clause (c) the words "*any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter*". I seek to delete the words "*beyond what is acceptable in a free and democratic society*" and the word "*or*" so that (c) goes to read that "*any limitation of the enjoyment of the rights and freedoms prescribed by this Article beyond what is provided in this Constitution*".

THE CHAIRMAN: No, that removes a very essential element which has to do with the democratic society. I think that would be a futile exercise really. I think let us not pursue amendments for its own sake, it is not even seconded any way.

MR. WANENDEYA (Budadiri East): Thank you very much. Mr. Chairman, taking our history into account, I would like to move a small amendment to 2(a) to be after the word "*political*" we insert the words "*intimidation and persecution*". Mr. Chairman, the point is that -

THE CHAIRMAN: No, you can not make your reasons before we know whether you are seconded. There is no secondment so we cannot give you the Floor. I think what we do Hon. Members, I have been trying to test the ground to see really whether we have any useful information to add. I would suggest that we go on to pronounce ourselves on this one. Let me put the question. The question is that a new Article be added to stand part of the Constitution in the terms set out under Paragraph 29 of the Report of the Legal and Drafting Committee and as moved by Hon. Ben Wacha. Let me now put the question.

(Question put and agreed to)

DR. KABAYO (Kassanda South): Thank you very much, Mr. Chairman. In light of the amendment which has just been passed, I seek clarification on whether Article 51 Clause (2), Article 59 Clause (3) and Article 69 will now be deleted.

THE CHAIRMAN: We do not delete 69, do we? Article 69 is already part of the Constitution, we passed it. There are those derogation clauses which we said will fall by the way side if we adopt the General Derogation Clause. What is left is now for the Draftsmen really, it is not a serious job for us to get mixed up with. Now, after that, we have further propositions. There was - if you look at the report which was circulated. We have Hon. Kanyeihamba, Hon. Ben Wacha can help us, there is 53 which is No. 32.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. Mr. Chairman, the proposed amendment in 32 consists of an agreement that was reached after protracted discussions with Movers of the various amendments relating to bailable offenses and the period for which a suspect can spend time in prison. Mr. Chairman, we also had the benefit of the Attorney General in this discussion which he attended. At the end of this discussion, we came up with a composite clause which is contained in this No.32 and we are proposing, Sir - *(Interruption)*

THE CHAIRMAN: That is what is going to be moved by Hon. Omara Atubo.

PROF. KANYEIHAMBA: Mr Chairman it was agreed that since there were many people who acted on this, it should really come as a report from the Committee and I have discussed it with Hon. Omara Atubo and he is agreeable to that.

THE CHAIRMAN: Well, he is there and he can speak for himself. Are you in agreement with that procedure?

MR. OMARA ATUBO (Otuke County): Well, Mr. Chairman, if Hon. Kanyeihamba, the Chairman of Legal and Drafting Committee finished his report, I can then formally move the Motion but I think that really that would be wasting the time of this House. He can give a report and move and then we can either debate or adopt it, Mr. Chairman. Thank you.

PROF. KANYEIHAMBA: I thank you, Mr. Chairman, I therefore agreed with the Movers, Hon. Omara Atubo and his Colleagues as I said there was an input by the Attorney General. We are suggesting that Article 53 Clause (4) on page 20, we delete Clause (4) and insert the following Clause (4) "*where a person is arrested in respect of a criminal offence (a) the person is entitled to apply to the court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable. (b) In the case of an offence which is not triable only by the High Court -*" This would relate to offenses tried by Magistrate Courts and lower courts, "*- the person shall be released on bail on such conditions as the court considers reasonable. If that person has been remanded in custody in respect of the offence before trial for 120 days or more. (c) In the case of an offence triable only by the High Court -*" these would be offenses, Sir, carrying a death penalty, "*the person shall be released on bail on such conditions as the Court considers reasonable if the person has been remanded in custody for 360 days or more before the case is committed to the High Court,*" I beg to Move, Sir.

THE CHAIRMAN: Hon. Omara Atubo, you want to speak to this Motion?

MR. OMARA ATUBO: Mr. Chairman, as I said, when I was trying to draw the attention of the House to Clause 53 (4) which talks of "*not tried within a reasonable time*" I told the August Assembly the historical background to this situation where various regimes have abused this right to bail as well as to fix periods within which a person can remain, can be denied bail and be remanded for long periods. I told this House and if I may just say it as a reminder that at one time, the maximum period was 365 days, another regime went to 520 days. Now as the situation is, the trial before the High Court is 480

days before you can apply for bail and before the Chief Magistrates Court, it is 240 days. We think that if things were normal, we would have left this to court and to Parliament but knowing our history, we are going to keep on subjecting this very important right based on the presumption of innocence of a person, to the fluctuations and the whims of the regimes that come to power. So I thought that it was important that we address this very important area of fundamental rights and freedoms, the right to liberty based on the presumption of innocence, that we restrict this. I was even more radical in my proposition, Mr. Chairman, on this question of days and I had even moved further on the question that if a person is committed for trial before the High Court, there should even be a limited time because you can commit a person to the High Court and then the Executive may not be able to give the Court facilities to try that person in the High Court Session in Lira or in Moroto because there is no money for the Judge to go there but the Executive has money to tour the whole world and enjoy themselves but I thought that I was convinced that this was not necessary, that we leave it to Courts to see that there is a speedy trial because there is already a provision to that and that if a person is committed and he is not tried within a reasonable time, the Court may use their powers to discharge him. So, Mr. Chairman, the position as presented by Hon. George Kanyeihamba is the ideal situation we reached under protracted negotiations with the Attorney General and others. So I beg to move, Mr. Chairman. Thank you.

THE CHAIRMAN: Hon. Delegates, I think this is a compromise reached. Let us pronounce ourselves - this was a reference to this Committee when we discussed Article 53 and we accepted everything except (4) which bogged us down and we referred it to this Committee, they have come back with this proposition and I would like us to put the question to this one. Let me put the question that the proposed Clause (4) to Article 53 as moved by Hon. Kanyeihamba do stand part of the Article.

(Question put and agreed to)

THE CHAIRMAN: Now, that being so, unless I am advised by the Legal and Drafting Committee, we do not have any other reference on 53. So now let us declare ourselves on 53 as amended. I put the question that Article 53, as amended, do stand part of the Draft Constitution.

(Question put and agreed to.)

THE CHAIRMAN: Now, we had already come up to Article 69. Now we have Articles 70 and so on. Human rights and freedoms during a state of emergency. From the reports available, it would appear there are amendments proposed to articles 71 and 72. Do I take it that the Legal and Drafting Committee received no amendment to 70?

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. You are right that as far as I recall, we did not receive any amendment on Article 70 but we did receive amendments on 71, 72, and 73. I am obliged to say that the amendment on Article 71 named now under 34 is an amendment which the Legal Committee advised very strongly that it should not be moved in light of what we had already passed before but Hon. Higirow Semajege exercised his rights, he insisted that he will bring this to the Plenary Session. The same, Sir, applies to the amendment contained in 35 where the Hon. Member and his colleagues are insisting that Article 71 should be deleted. Again this was contrary to the advice of the Legal and Drafting Committee. The others in 36 and 57 were passed by the Legal and Drafting Committee as being suitable for debate and possible adoption by the Constituent Assembly. I thank you, Sir.

THE CHAIRMAN: What about 30 on the old report, there are two amendments there on 30 and 31.

PROF. KANYEIHAMBA: Mr. Chairman, on the old list, 30 and 31 as far as I remember were considered by the Legal and Drafting Committee which said that they should be debated by the Hon. Delegates. I thank you, Sir.

THE CHAIRMAN: Thank you. Before we come to this, let us first of all, since we do not have amendments proposed on 70 which is a general opening statement anyway, decide whether it stands part of the Constitution or not. I will put the question on 70 that Article 70 do stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Then we now have 71 which has attracted a number of amendments. There are in the following form, you find there is an amendment by a consortium of Members led by Hon. Wasswa Lule.

MR. MULASANYI (Rubanda County West): Thank you, Mr. Chairman. Mr. Chairman Hon. Kanyeihamba has told us that the Legal and Drafting Committee refused amendment on Article 71 but he did not give us the grounds on which the Legal and Drafting Committee refused that amendment. Mr. Chairman, can I know the grounds? Thank you.

THE CHAIRMAN: Before he comes to that, we have first to know how we are proceeding and that is what the Chair was taking the House to. We have under 30 an amendment by Hon. Wasswa Lule and others

to delete paragraph (b) and insert another one in the terms set out in the report and then there is also an amendment proposed by Hon. Omara Atubo, Hon. Wasswa Lule and others to insert "30 days" in paragraph (e) of the same Article. Then there is a proposed amendment by Hon. Higirow Semajege to delete the words in paragraph (b) so that the words "at the earliest practicable opportunity. Then there are also an amendment proposed by Hon. Kagimu Kiwanuka, Hon. Mathias Ngobi and Hon. Wasswa Lule that we delete Article 71 in totality. Now, that being so, in accordance with our rules, we shall start with 35.

DR. HIGIRO SEMAJEGE (Lwemiyaga County): It should be clear that actually I had my original amendment which was amending the Draft as it is but what the Committee hesitated here is as if I am amending an amendment. My only amendment was to delete "72 hours" and replace them by "48 hours" and it was circulated on the 29th of August. Now, what they have done here is not exactly what I had said. So if you give me a chance, my amendment will be reading that we delete 72 and be replaced by 48.

THE CHAIRMAN: But here you are talking about 24.

DR. HIGIRO SEMAJEGE: No, this is again a mistake.

THE CHAIRMAN: Any way by the way things are, we shall come to you later. What we are now going to do is we start with 35 because 35 seeks to delete the whole Article and if we delete it, then there is no need to go to the other amendment. So I will give the Floor to Hon. Kagimu Kiwanuka to move the Motion under numeral 35.

MR. KAGIMU KIWANUKA (Bukomansimbi County): Thank you, Mr. Chairman. Allow me, Mr. Chairman Sir, to thank you together with the Legal and Drafting Committee for having accorded me this opportunity to fight a Clause in this Constitution which has caused a lot of suffering to innocent Ugandans in the past let alone with the children of those victims. Mr. Chairman, Sir, I move that Article 71 in our Draft Constitution be deleted completely. This satanic verse was smuggled into the 1967 Constitution to get rid of the government opponents of the time. In one of his speeches which made him to fall out of favour towards colleagues, Hon. Adoko Nekyon in 1967 - (*Interruption*).

THE CHAIRMAN: Now, you intend to move that Motion. Is it seconded? Okay, seconded by Hon. Awori and Hon. Chebet Maikut and could be others as well. You can go ahead.

MR. KAGIMU KIWANUKA: In one of his speeches which made him fall out of favour towards his colleagues, Hon. Adoko Nekyon in 1967 said in Parliament and I quote: "*We are making this law to detain the DP's but we must remember that a law is a law and one day it will reverse and we are bound to suffer from it*". Of course the engineers of this bad law could not in their myopia dream that such a prophecy could become a reality one day. Godfrey Binaisa, the chief architect of the same was the first to take to his heels when he realised that he was going to fall a victim of this very law which was of his own making. Ever since he joined politics, Obote had always identified two great enemies, the monarchies and the DP. Having got rid of the former, Obote thought hard of doing away with the hard hearted politicians whom he had failed to scare into exile with his several arrests, house searches and all sorts of intimidation. Obote had several people he wanted to silence. Whenever his Political opponents were arrested and taken to court, of course, they were declared innocent. All this was before 1967. Having consolidated himself into power, he decided to get rid of this outstanding problem once and for all. There was no way of doing it apart from introducing detention under a state of emergency. Obote had several other reasons for introducing a state of emergency per se. This we shall deal with at the appropriate time that is when we come to Article 129.

At this material time, Mr. Chairman, I would like to deal with detention under a state of emergency. A

state of emergency is a situation whereby all ordinary laws are suspended. This state is usually declared when there is for example a natural calamity like an earthquake. In such a situation, the government declares a state of emergency so that it can use, for example, private means of transport and other private facilities to arrest the situation without risk of being sued later. Under a state of emergency, the government is free to use any vehicle to transport victims to the hospitals and so on. In such a case, the state of emergency is justified. However, I think it is proper at this time Mr. Chairman, to give a brief history of detention under state of emergency.

It was introduced to fight drug trafficking, the crime which results in death or physical disability on the part of its victims. In order to cope with the crime which was precipitated by the need for heroine, society and to expend considerable resources on law enforcement and criminal justice, a lot of money had to be spent on every level like police and so on. At one time the U.S. Government spent more than 250 million dollars on combating drug trafficking. On arrest, the suspect had to be detained and then tried. This proved to be a lengthy and expensive exercise which strained an already overworked justice system. A preventive detention law was just enacted to detain dangerous persons. Suspects were confined to jail by judge's decision and were denied the right to bail. Later this detention law was extended to the political arena. For example, mass arrests were used to detain large numbers of political demonstrators. On one May day demonstration in Washington, nearly 13,000 people were rounded up and confined in jails and special camps. Although most of the charges were later dropped, the government had stopped a protest against itself.

In summary, Mr. Chairman, the point is that the government fighting drug trafficking would declare a state of emergency over an area and thereby, would detail all the suspected drug traffickers. In 1967, Obote was only too happy to pull a leaf from this system and enter into the 1967 Constitution as a draconian law directed towards his political opponents. Mr. Chairman, Sir, while looking for a seconder for my motion, I had no one to run to other than Hon. Mathias Ngobi whom I felt understands the problem more than anybody else together with Mr. Ibingira, the late Kirya, Dr. Lumu, Hon. Abu Mayanja. Hon. Ngobi had to languish in prison under a law which had been enacted by their once sweet political favourite of whom my father had

warned them very strongly. On approaching the Legal and Drafting committee, I was not surprised that my motion did not meet with great enthusiasm and support. Maybe it was because none of them has ever suffered from this brutal law. However, I should like to caution Hon. Delegates that some of the people detained in 1966 and 1967 who were later released by Amin in 1971 never knew that one day they would fall from heaven to a hell they once supported so much as a gate pass for their poor and innocent political opponents.

Mr. Chairman, Sir, I appeal to Hon. Delegates not to approve a hell of which, definitely, some Members here will one day have to have a share if approved. It is true as a prison officer one time told my mother while she had gone to see my father while on detention, I quote: "*We treat political prisoners with care because Ministers are from here*". Home people may not be wrong when they say that after all from detention, I will become a minister like the late Balaki Kirya, Hon. Abu Mayanja, the late Benedicto Kiwanuka who even became chief justice. However, not all may be lucky. I do not want to narrate the orgies of the past. I tell you Mr. Chairman, there is nothing good in detention under a state of emergency. It is not even necessary at all apart from torturing political opponents. Some people may argue that what is there is a cholera outbreak and you need to restrict people in a particular area. This is sheer camouflage.

If you read article 73 Clause 2(a), it talks of a lawyer being consulted. What has a lawyer got to do with a cholera outbreak? In article 71 (a), it is stated that the detainee will be furnished with a statement specifying the reasons for one's detention. Now, I ask Mr. Chairman, if a plague has broken out and I am restricted in a certain area, an obvious case which I feel is genuine and good for my fellow country men in other parts of the country, do I need to be informed of the reasons for my detention? And if a serious contagious disease has broken out, Clause (b) of Article 1 talks of allowing access to my next of kin. Does it mean that my next of kin will be immune to the disease? It is a contagious disease, no one should be allowed in the area except doctors and nurses and those concerned with eradication of the disease.

Other people may argue Mr. Chairman, that what if curfew is declared and one is found moving around, now, does it mean that such a person has to be

subjected to such a severe and inhuman laws? Article 53 justifies for any criminal act. If someone commits a crime, let him be taken to court, convicted and sentenced. Some may argue that the law was only misused by past governments but the law in itself is good. Personally, I repeat that I see nothing good in detention under a state of emergency. It is true it does not mean that because something was misused in the past, therefore it has to be done away with. For example, the army. It should be clarified that we should retain what is necessary. The army, the police and the like are necessary. So we only have to rectify their regulations plus military training for everybody.

MR. BIDANDI SSALI: Mr. Chairman, Sir, I would like to be assisted by the Chair and maybe by the mover. I do not know whether it should be a clarification or an order but in light of what we have just passed to be part of the constitution under Article 70, is the Hon. Member in order to now propose deletion of 71 when 71 is talking of an aspect of a detail of an article which we have already said should be part of the constitution? I just want clarification from the Chair whether it is really in order.

MR. KAGIMU KIWANUKA: Mr. Chairman, I am only after detention under a state of emergency. There are many aspects under a state of emergency. It is not only detention, I am after detention only. As I mentioned earlier that in Article 129, it deals with it in details. I expect to contribute more on it as a state of emergency. Now, I am after detention only.

THE CHAIRMAN: Declaration of a state of emergency is taken care of elsewhere. But here Chapter five is about human rights and it does recognise that there could be a state of emergency and that some laws could be made relating to the management of the state of emergency. And here, the presumption is that those laws could extend to providing for detention during certain emergency. He is saying that he would rather not have detention at all. You can pass other laws like providing for the management of the situation but not necessarily detaining people. That is what he is trying to say by deleting that one.

MR. KAGIMU KIWANUKA: Thank you very much Mr. Chairman for your great wisdom.

THE CHAIRMAN: Sorry, Hon. Bidandi Sali, there is still some point to be clarified?

MR. BIDANDI SALI: Yes, I still need clarification Mr. Chairman. When we say an act of Parliament will be in order in as far as a state of emergency is concerned and you also say that the provisions of any enactment other than an Act of Parliament dealing with a state of emergency and so on, I do assume Mr. Chairman, in my own way of looking at it, that even detention, even if you remove this Article 71 and leave 70 as it is, I do not see how Parliament is prohibited from enacting a law that will allow detention. Therefore if it does not prevent it, it is as well that we give the limits if such a law is given. If I understand it wrongly Mr. Chairman, I want to be clarified. In other words, it is dangerous to allow 70 to stand which we have already done and yet do away with 71 which tries to sober the circumstances under which detention would be allowed which we have already done in 70.

THE CHAIRMAN: Well it is really up to the mover. He can delete without inserting any other provision but the provisions relating to state of emergency are found in proposed Article 129 and so on.

PROF. WADADA NABUDERE: Mr. Chairman, I was drawing the attention of the Assembly to that particular article so that it should be considered at the same time, particularly Clause 8 of 129 which says that "*Subject to any restrictions imposed in this constitution, Parliament may by law enacted under Clause 7 of this article provide for the suspension of any fundamental human rights or freedom during the period when a state of emergency is in force*". I think we should consider this together because it is a derogation from Article 53 and other articles which we had already passed and that is why some of us are moving a motion that these articles 70 to 73 should be moved so that they are dealt with together and this article was rejected by the Legal and Drafting Committee. In fact it would have been better for this to come under this area so that we consider the implications of this article together with the articles 70 to 74. Any way that was just by way of information.

MR. KAGIMU KIWANUKA: Yes, Mr. Chairman. We asked the Legal and Drafting Committee to move Article 70 to Article 129. It is unfortunate the chairman did not give a report on that. We insisted, they refused. Now I feared to give that first but it would have been better that Article 70 moves to 129, that is where we shall find it when we are tackling state of emergency per se.

THE CHAIRMAN: Hon. Mayombo, are you a Member of the Legal and Drafting Committee? Yes, could you give us some information and maybe some reasons why.

LT. MAYOMBO: Thank you Mr. Chairman. Mr. Chairman, Hon. Kagimu and others did not bring article 70 as such to be moved to article 129. In fact they wanted the whole of 70 to 74 to be moved to article 129. We advised that this Chapter is about human rights and under a state of emergency, human beings continue to exist. So human beings must know there is due rights they have under a state of emergency. So it is therefore fitting and proper for these provisions to be within the chapter of human rights. We went ahead to add that Article 129 is providing for powers of the executive while the executive has power to declare a state of emergency and how those powers are challenged by Parliament or how they have got to account for the people of Uganda every after 90 days or every after six months on whether or not a state of emergency should be continued. So we felt, as a Legal and Drafting Committee, that the rights of the people of Uganda must continue to be shown and clarified under Article 70 to 74 even when a state of emergency exists. That was our view Mr. Chairman and it is still our view. Thank you.

THE CHAIRMAN: Hon. Kagimu, now of course it means that should your motion succeed, then you will have also the right time to attend to the other provisions when we come to them.

MR. KAGIMU KIWANUKA: Mr. Chairman, if it succeeds, I will move that there should be no detention, that this Article 70 should not include detention under a state of emergency. I was waiting for it to be passed by the House and then I will find the state of emergency in Article 129. That is where you have to fight it strongly because that is where it is detailed.

THE CHAIRMAN: Under Clause 8?

MR. KAGIMU KIWANUKA: Yes, under clauses 8 and 7 but mainly that Article 129 that is where we will find it. I did not want to mix it up because I feared to prejudice the House against my contribution on 71.

THE CHAIRMAN: Okay, you go ahead but you should be winding up soon because our rules say 15 minutes.

MR. KAGIMU KIWANUKA: Oh! sorry Mr. Chairman. I have been interrupted. The army, the police, these institutions which are necessary, we only have to rectify their regulations plus military training for everybody. However, unnecessary laws Mr. Chairman, which can be misinterpreted by bad governments, we should not risk. History repeats itself. Time and again, the NRM government has reminded us that we should not take the present peace for granted. It can be taken away any time. Some Members, Mr. Chairman, may argue that we are legislating for good and legal governments not bad ones. But I would like to inform Hon. Delegates who share such mentality that if we had a guarantee that governments would be good, we would not labour so much in putting up such a document. We would only prescribe guidelines. We are here to struggle and also to put valves in as many loopholes as possible that could be capitalised upon by any bad government. It is true a government can tear away the whole thing but again, a value has been provided in Chapter One to avoid such a terrible abuse which had become the order of the day in the past.

Mr. Chairman, some members may further argue that detention under a state of emergency should be used only during war time but still, one can create a war situation to justify an imposition of a state of emergency so as to detain his or her political opponents. Our Lord said that sons of darkness are more cunning than sons of light. I beg to tell you Mr. Chairman and Hon. Delegates that once we leave the slightest chance, it will be used by future bad governments. These governments will employ all the dirty lawyers whom they will assign the duty to look for a loophole that can be used to suppress political opponents. This emergency detention was intended for political opponents and nothing else.

Article 73 talks of the Uganda Human Rights Commission considering the case of a detainee. What has the Human Rights Commission to do with someone restricted in an area due to a natural calamity for example, a plague? Mr. Chairman Sir, further, the Human Rights Commission will be as impotent as ever. Take the case of the present one. First of all, the Chairman and some members are appointed by the President who, in most cases, will have engineered one's detention. Now, everybody will fear to genuinely investigate the case either for fear of losing the job or for risking joining the detention wagon himself. Hence you will find that the Commission will always be investigating on crimes committed

during the past regimes. The Commission will never investigate the regime employing it. This has always been the case as it is now and ever shall be. So this body will never benefit the detainee of the time. I have happened to chat with some human rights bodies members, they will tell you about violations of human rights with evidence but they will be quick to add that they have told so and so but the latter have answered that the culprit is a big officer in the government who is untouchable. What to do? If a mere officer is feared in such a way, imagine how a President or even a Minister will be feared and moreover these are usually the people behind detention! And even if they may not directly be involved or implicated, their names will be used to scare off the so called human rights commission.

Ever since the NRM Government came to power, it has always been engaged in war in the north but has it ever declared any state of emergency? But is this not provided for in our current constitution? Imagine if this war had been during the previous governments, the whole of the north would be under a state of emergency. People would be picked and locked up in prison. Moreover, when one wants to get rid of his political opponents, he will ensure that the state of emergency does not end. He will prolong the war so as to prolong the state of emergency so that the detention period may be prolonged. Obote declared the state of emergency in 1966 after bombarding the Kabaka's palace. From then on, he forced his Parliament to extend the state of emergency every after six months and till he was topple in 1971, the state of emergency was still on. This was mainly intended to keep his political victims in prison and those outside prison on tension. In addition Mr. Chairman, an earthquake erupted in Western Uganda. The Government has contained the situation without declaring a state of emergency whereas this government would have been justified in such a case. This is because the NRM Government tried as much as possible to avoid identifying itself with unnecessary laws which have been misused by past regimes and hence which if used can be misinterpreted and thus tarnish the good image of the NRM Government.

Mr. Chairman Sir, allow me to call upon the Delegates to put themselves in the shoes of would be victims of this draconian Law. I agree that whether this law is there or not, a bad government will detain people. But then, why do we open the door for Satan so widely? Let him open for himself. We should not bear the curse of our grandchildren that we made a

constitution which would allow future governments to victimise their political opponents. Let a bad government introduce the law itself. Moreover, we have provided for measures to deal with such governments which act unconstitutionally. Mr. Chairman Sir, if this article is approved, it will give green light to the bad governments to include a lot of details in this law for a political tyrant, it does not suffice to detain someone. The tyrant makes sure that even in prison, the opponent suffers. The late Bataringaya at one time ordered that water be poured in the cell of Muzei Kibuka one of the DP founders for having refused to come to meet the so called Minister when the latter visited the prison. The detainee were allowed about 30 minutes a day outside. Hon. Ngobi can testify to this and they were not allowed to talk to anybody. At one time, one detainee had his visit cut even shorter because he had said hallo to his colleagues. Detainee were never allowed to talk to each other. They were never allowed to read anything, nor even see their personal doctors.

Mr. Chairman Sir, details that flow from articles like 71 are horrible. Hon. Ngobi will bear me testimony that only their wives were the ones allowed to visit them once a month. During the visit, they always talked on phone. There would be a glass between them. The detainee would be surrounded by so many prison warders and the same would be true for the wife. She would also be surrounded by prison officers. This law tortured the victims physically and psychologically. The big sons and daughters of detainee were never allowed to see their fathers. It was only the small kids and no one else. Permission to visit the detainee should be granted only and only by the Interior Minister who was by then the late Basil Bataringaya whose office was at Entebbe. The wife would be allowed to visit the husband once a month and she had always to go to Entebbe and moreover on specific days whereby the Minister made sure he absented himself so that the wives could miss some monthly visits. Remember Mr. Chairman, Sir, one time my mother managed by sheer chance to get the Minister who was running away, purposely. She tried to plead with the one time favourite of my father who he had lured into politics thus I quote: "You are leaving without granting me permission to visit my husband. To whom do you leave me?" "To God", quickly retorted the unforgettable and unforgivable Minister. I narrate all this so as to caution Members that this article is pregnant with meaning. It has a lot of suffering implications embedded in it. What we see written is just the cover

of barbaric laws. Once passed, it will, whether we like it or not, give way to draconian laws which were used to oppress innocent Ugandans in the past.

We have, like in Ghana, Kwame Nkurumah who detained his political opponent one Mr. Joseph Mbocecere Kwidankwa who died in Asoswa prison. The late Dankwa sent so many messages pleading with the President for his release since he had fallen very ill. In reply, the President only ordered that the prisoner be put on chains which he sustained till his death. Because of time Mr. Chairman, I would like to halt here at the moment while calling upon Hon. Delegates to do everything in their might to frustrate this terrible and unbecoming law which has nothing else intended in it but to victimise us in future together with our offspring. Mr. Chairman, I beg to move. (Applause)

THE CHAIRMAN: Hon. Delegates, the motion is that Article 71 be deleted.

LT. GUMISIRIZA GUMA (Ibanda North): I thank you very much Mr. Chairman. Mr. Chairman, I strongly want to oppose the amendment. Because we are here talking of running a society, and if the mover wanted, we would have started right from the state of emergency and removed it completely. We know all very well that there is no country in the world, however democratic, that does not have a law governing state of emergencies, and I do not think that even if one went in heaven will not find there laws that if they are contravened such steps must be taken. So, therefore, I see it that unless this Article is provided, we will have a situation of anarchy and society may be ungovernable, and after all this clause gives provisions that if followed, they will protect the rights of the individual in question. Thank you very much.

MR. OBIGA KANIA (Terego County): Mr. Chairman, first of all, the mover of the Motion says we should not pass this Article because it has been misused in the past and we may also be victims. I would only say probably we should legislate out of fear, but we should not fear to pass a law even if we are going to be victims. In fact, we are not going to be victims as it were, but if there will be governments, our detention will be necessary if you have done something wrong. Yes, if there is a good law and a good government and you are detained, even if you are a Member of this Constituent Assembly today, you do not regret it because it does not say you are

passing laws for others only. You are passing laws which affect all of us. Secondly, Mr. Chairman, I think in a situation of emergency, whether it is political or natural, there might always be need for a government to detain some people and to assume that it will not be there does not necessarily mean that there will be no detention. In fact, it means that a government will create laws arbitrarily to achieve the same. So, rather than leave the situation arbitrarily for the government to decide the way it will out of its own whim, I would rather we provide for these provisions in order that a government in a state of emergency will not detain people arbitrarily but rather in accordance with the Law.

MR. NYAI (Ayivu County): Thank you, Mr. Chairman. Mr. Chairman, I beg to very strongly support the Amendment - (*Applause*). Mr. Chairman, in this Assembly, we have at least passed certain Motions without due cognisance of their future implications and import. Some of us, Mr. Chairman, think we are legislating and institutionalising a Constitution for only protecting our immediate tomorrow. I do not believe, Mr. Chairman, that there are certain human rights which a Parliament can suspend. In fact, Article 71 is so obnoxious, particularly, as it emanates from Article 70. In due course, Mr. Chairman, during reconsideration stage, I am giving notice that I will suggest Article 70 to be struck out. There are too many words which leave the individual to the whims of those in power. You cannot know what is reasonable - that is justifiable I mean.

We have already in this House passed an Article as to when somebody, who has done wrong, should be brought to court. Why should we now derogate from those rights and take this same individual and treat him as if he was a lesser individual, in fact, a subhuman, an animal? Whereas our history is full of bad things, I believe, Mr. Chairman, that during the general debate, we had opportunity to talk at each other and to each other which gave us a chance, having vented our angers, we should now sit down stably and prepare a true Constitution which will last the test of time. I do not believe that we should have two separate laws for trying the same Ugandan in one Constitution. For that reason, Mr. Chairman, I strongly support the Amendment.

MRS. LAGADA (Women Delegate - Apac): Thank you, Mr. Chairman. Mr. Chairman, I am slightly puzzled, and I am puzzled because to me,

Article 71 stems from Article 70. It presupposes that at one point you can have a state of emergency and I think Article 71 is saying that in a case where you have a state of emergency, we should in this Constitution provide for safeguards for those people who will be in that area where there is a state of emergency - (*Applause*).

Mr. Chairman, I am from Apac and Apac is in Northern Uganda which was declared under a state of emergency. First of all, you are going to have so many human beings who are likely to be arrested under that state of emergency and it may not be possible to bring all these people to court immediately. By saying that we should delete Article 71, are we saying we should then leave all those human being to the mercy of the state who may decide to keep them there for one year without bringing them to court? If, Mr. Chairman, Hon. Members, we know that in the process of a government ruling a country, things can go wrong and surely as our past experience has shown us, there can be a state of emergency in maybe 50 or 100 years, why are we fearing to provide or to make provisions for such a state so that the people who are affected are protected as best as possible? So, Hon. Members, I am going to appeal to you that let us not look in the past alone and say because a state of emergency was abused, we are never going to have a state of emergency again. It is likely to happen at one time and I for one would love to have provisions in the Constitution which will protect me if I am in that area where there is a state of emergency so that my rights are not abused. I would hate to leave Ugandans at the mercy of any state which will be ruling then. So, I beg you please to oppose the Amendment and we have this provision for state emergency in case it ever happens. Thank you.

PROF. NABUDERE (Budadiri West): Mr. Chairman, I support the Amendment. I have been a victim myself of this detention under emergency. Someone is telling me that this has been under bad leadership, but that is the case that it will happen again, that detention is used for political purposes. Our history shows clearly that emergency declarations and detention under emergency have been used for political purposes. This was the case as the Hon. Mover said, in 1966, but also from 1969 when the emergency which had been declared in Buganda was extended to the whole of Uganda simply because there had been an incident in Lugogo where Obote was supposedly shot at, and using that extension of the

emergency, a number of leaders in the East were arrested which included myself. Former Vice President Nadiope was arrested under that extension of the emergency, including Hon. Obwangor, and the way we were treated during that state of emergency was - the conditions were as horrible as pointed out by the mover. We were arrested, I had gone, in fact, to Nairobi, I was on my way on a honeymoon and I rang my house in the evening, because I heard on the Radio in Nairobi that a state of emergency had been declared, so I rang my house to find out from my house-girl what the situation was, and I was told that the house had been surrounded by the Police. So, I rang the Police and asked them what was going on, and they said where are you, I said I am in Nairobi then they told me that we advise you to come back. So, I said why should I come back, and during this discussion I came to a conclusion that it will be worse if, in fact, I left Nairobi for Dar-es-salaam. So, I came back to Uganda and when I reached the Police Station at Tororo, I was directed to go to the Police Station in Mbale and when I reached there I was given a Detention Order and my offices were searched, my house was ransacked, I was brought to the Police Station to be detained in the Police Station, in the cells which were used for criminals. I was given to sleep on a papyrus mat and I protested that this cannot be the situation in which a respectable Ugandan like myself, a lawyer should be treated and when I have not committed any criminal offence. I was detained there for almost three weeks before we were moved to Luzira where we were detained under maximum security conditions, where we found our friends lbingira, Ngobi - the five ministers that Obote had detained five years earlier. The conditions in the prisons were terrible.

Really, I would urge, Mr. Chairman, that we should recollect that in passing Article 53, we did, in fact, refuse to accept the Article 53 paragraph 7, which dealt with the issue of habeas corpus, we refused to accept derogation from that right of habeas corpus during emergency period. We preferred that individuals should have the right to habeas corpus even during emergency periods, when a state of emergency was in force. I would also like to remind Members that the Article which we just passed, the general derogation clause clearly excludes power of Parliament to make laws which would include the detention of people. So, the Amendment is, in fact, in line with provisions we have already passed which restricts the use of emergency for purposes of derogating from the fundamental human rights that were

passed. I would, therefore, Mr. Chairman, without going too much into length, for those of you who have not been in detention, please take note, it can be terrible there, and I would like us to find a way of dealing with detention during emergency without having to use special powers which invariably will be used for political purposes. Thank you, Mr. Chairman.

MR. OMOLO (Soroti Municipality): Mr. Chairman, I seem to be lost, but I look at the provisions in 71 as provisions to safeguard somebody who is already in danger - (*Applause*). Now, if there are provisions to safeguard a man who is in danger, why should we refuse them? So, I therefore, stand to oppose the Motion for that reason only - (*Applause*).

CAPT. BABU (Kampala Central): Mr. Chairman, thank you very much. Mr. Chairman, I do sympathise with the history of this country and those it has affected. Mr. Chairman, all of us should be, because a lot of our people suffered, not only that, Mr. Chairman, the result of that suffering is this House. We are here to put what went wrong in the past. But, Mr. Chairman, we should not be so blinded even to remove a provision that is going to protect other people. This provision, Mr. Chairman, 71 is to protect people who might be detained. Now, if the argument is to remove detention, I would like to support anybody who brings an Amendment to remove detention. But I am not going to support an Article that is going to violate the human rights of our people. We are saying here, basically, Mr. Chairman, one, that if somebody is detained within a reasonable time which is 24 hours here, the man must be taken to court. Two, his family must be informed, three, in fact, it goes on to say within not more than 30 days, in the gazette, we should be informed where the person is detained so that our people do not get lost, like in the olden days where they would take somebody and detain him somewhere and you would never know where that person is detained.

Now, Mr. Chairman, you know sometimes I get worried, those who used to violate the human rights in the past have become the human rights champions today. I want us to be very serious, Mr. Chairman, that when we are talking, we better talk about history. I am one of those who is going to fight any state that might violate the human rights of anybody, but people should not be so blinded to an extent that they are going to remove Articles in this Constitution that are going to protect the people who sent us here.

It looks like the people who moved this Amendment missed the point. I would like, therefore, to request and suggest very kindly and very candidly that they should go and rephrase this Amendment and say they would like to remove the words "*detention of emergency*". Thank you very much, Mr. Chairman.

MR. ABU MAYANJA (Busujju County): Mr. Chairman, I think that this is an Amendment on which I can claim to speak with some authority. I was present at the Malborough Constitutional conference - Uganda Independence Conference when the predecessors of these provisions were first introduced in our Constitution and we fought very hard to have them introduced, because in those days, under the Emergency Powers Ordinance of 1939 when there was an emergency, the government would declare a curfew and the people would just be arrested. Any Police officer would go and arrest people and dump them in Police stations without stating who arrested them, where they were arrested from, why they were arrested and so on - anyway it was chaotic. So, we wanted to introduce order, we realised that any sensible making of the Constitution is always torn by two conflicting interests: the requirement for order and needs of liberty. So, you must not, in the interest of order, destroy liberty completely, but you must also not, in the interest of liberty, make it impossible for government to maintain law and order especially in situations where there is war or emergency to such magnitude that the lives of the community become endangered.

Therefore, Mr. Chairman, I was trying to narrate the genesis of this - people would be detained, people would be arrested at night in a curfew and they would be taken and nobody would know what happened to them. So, we said that when a person is detained, first of all, he must be informed of reasons why he is being arrested and is being detained himself, and that must be stated in the Constitution. Two, that his family must be informed so that they can bring and test the legality of the detention in a court of law by bringing in an application for a right of habeas corpus. When this is produced, the High Court can enquire and find out whether the man is being detained lawfully or unlawfully and three, to safeguard against people who were disappearing and dying in prison or being shot at and no one knowing about it. We said that if a person is detained, periodically there should be publication in the gazette, of people who are detained - over reasonable intervals - so that people know the person whom the government is officially

holding. As you know, many people started disappearing, especially, under the regime of Idi Amin and we had to make a law to enable their families to go and claim letters of administration to their estates - people just disappeared! Now, we do not want that to occur again.

So, Mr. Chairman, I would like to appeal to my young friend the son of my comrade in arms - yes, indeed in detention, Mr. Chairman - I was detained with the late Benedicto Kiwanuka in 1969 - I would like to appeal to him to consider these protective provisions. They are intended to protect the people who are detained during a state of emergency. If we decide in our wisdom that there shall be no state of emergency and there shall be no detention, then these things will not be necessary. But I am advised that Article 70 has been passed. So, when you have passed Article 70 as Hon. Bidandi Ssali was saying as I came in, then you must protect the people, you must protect the people and these protective articles are really absolutely essential for the family to know, for Parliament to know, for the community to know so that they can ask questions so that - because as Lord Acton said one time - I have looked at these things from both point of views of a victim and now I suppose in my other capacity as the Attorney General, I may be considered as one of the detainers, but Mr. Chairman, these matter and later on - in fact, I think I better give - in order to further protect the people who were detained, I will be moving an Amendment to Article 72 Sub-section (3) later on if I will be able to catch your eye and get permission. But, Mr. Chairman, let us protect the people who are detained, they are in a very sorry state if they are denied of this protection. Thank you very much, Mr. Chairman.

MR. BYARUGABA (Insingiro South): Thank you very much, Mr. Chairman. Having listened carefully to both the Learned Friends and the Hon. Assessors, I have come to a conclusion that I would oppose this Motion. I do not want my sentiments to be played upon by my history, that is the history of this country. True, we were saddened by what happened during those bad regimes, after all, who was detaining these people, who put in force these emergency laws? The DPs, the friends of the late Ben Kiwanuka, the unforgivable Bazilio, Bataringaya was the one doing that to his fellow DPs, indeed it is that person, and that is why I am saying we should not be taken by our sentiments. For sure if we are to take up Hon. Kagimu Mukasa's Amendment, we

shall be giving a license to bad governments to kill our people. It is licensing the bad governments to kill people without trace, and this we have seen, and this has happened in this country and we should not allow it. The Hon. Members of this House should realise that we are going forward and not backwards. Mr. Chairman, I want to register my support, my opposition rather, to Hon. Kagimu Mukasa's Amendment. Thank you very much.

MRS. SEMPA (Women Delegate - Luwero): Thank you, Mr. Chairman. In any part of the world, it is difficult to avoid running into a state of emergency at one time or another, sooner or later and for me, I feel it is a lot better to be safeguarded by putting in place limits to dubious activities that govern this state of emergency. For those governments which violate people's human rights hiding under the state of emergency, we are only abrogating these rights and after all, in this Constitution, there are going to be provisions to deal with such people who abrogate or defy the Constitution. Therefore, I think that if we do not put in place the provisions that will safeguard those people, we ourselves shall be the first people to be abrogating and defying the people's human rights if we leave it open, if we leave it at the mercy of any people of the government of the powers who will be detaining the people hiding under the state of emergency. Therefore, I strongly oppose the Amendment and I think people need to be safeguarded. Thank you.

MR. ADYEBO (Kwania County): Thank you, Mr. Chairman. Mr. Chairman, I have been listening to different delegates speaking, and let me take this opportunity to thank, especially, the Rt. Hon. Attorney General, Abu Baker Mayanja who, in 1969 was a victim of this state of emergency. But fellow delegates, let me appeal to you that we are making a political decision, any good politician should be ready to accept one of the three things to happen in his or her own life. One, when you chose to join politics, you must know you are a subject of jail and two, that you are a subject of exile and three, you should be ready to die for your country when you are doing the right thing. Those are three things which a good politician should accept to happen in his or her own life in politics.

Now, some delegates have been talking almost to personalise the state of emergency with what happened in the 60s, what happened in the past. But let me tell you, Mr. Chairman, and Hon. delegates that

we are dealing with a very dynamic world today where there must be law and order, and at any given time, you must need laws which must protect both the government, the citizens and all those who are in a given country and in as far as this provision is concerned in Article 71, I think it is just protecting the endangered people, people who need protection and whose fate must be known. Whose whereabouts must be known.

The other time we were dealing with the 18 politicians from Northern Uganda - my colleague the senior brother here, Adimola - about three of them, in fact. But we need to set good laws to protect the citizens of Uganda. Today I may be a Prime Minister, tomorrow another government may come and say you account for whatever you were doing, I must be ready for that and there must be good laws to make us accountable for our actions, for what we do and, in fact, when we are putting a law, do not put a law as if you are just - you know, the law is protecting a government in existence at the moment. No, these laws are for posterity. Tomorrow you may be a President, tomorrow you may be a Prime Minister, tomorrow you may be a minister, but you are going to handle the same problems of handling the nation, and there must be laws and we are here to put the laws without fear or favour.

In this respect, Mr. Chairman, I am opposing the Amendment and I would like the provision of Article 71 to remain. This only protects those people who will be actually under detention, and I would also urge, Mr. Chairman - I would also propose that we must also consider putting laws not only to deal with state of emergency when we are addressing political problems. There must also be some provisions to take care of national calamities under state of emergency. You know, the other time we were having earthquake in the West, we were having floods, the other time we were having Rwandese citizens slaughtered there flowing all over Lake Victoria, we could not eat fish and so on and so forth. And every time we must be needing some of the laws and these laws must be catered for here under a state of emergency. Apart from the political consideration, I would like and I would urge you Hon. Delegates to consider, maybe under a different amendment when time comes, to at least consider putting a provision to handle state of emergency dealing with national calamities in our country. With due respect, Mr. Chairman, allow me to oppose the Amendment and call you to put the question. Thank you very much.

MR. ODUR (Dokolo County): Thank you very much, Mr. Chairman. I think, Mr. Chairman, that the Motion we are debating is not really appropriate under the clauses which have been numbered 71, because after passing 70, it is inconceivable that we should be discussing detention during the state of emergency under Article 71. So, many people may be convinced to have no detention during a state of emergency, and I think if the Mover could consider bringing this Amendment under another Article, or maybe, bringing it during reconsideration, then it could be appropriate, but at the moment, I think we are not debating the right thing under the right Article. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Okay, I think, let us decide this one and then we go on. There are other Amendments coming to the same Articles anyway so that Members can contribute unless it is, of course, carried. But let us hear Hon. Kagimu first.

MR. KAGIMU KIWANUKA (Bukomansimbi County): Thank you, Mr. Chairman. In view of what I have heard, I would like to comment on what, for example, Hon. Lagada said *-(Interruption)*.

THE CHAIRMAN: No, no, we are not giving the right of reply. Hon. Odur has suggested something. I thought maybe you would react to it.

MR. KAGIMU KIWANUKA: Yes, that I said at the beginning, if my amendment had been passed, I wanted to move a motion that there should be no detention at all maybe, that may be confusing the House.

THE CHAIRMAN: So, you are saying that we should continue with the Motion as it is.

MR. OMARA ATUBO (Otuke County): Mr. Chairman, I think as a co-sponsor on this, although my name does not appear, I am happy you have given me an opportunity to speak, Mr. Chairman, and I want to start by dealing with interpretation to Article 71 which we have already passed. Mr. Chairman, Article 71 which we have already passed *-(Interjections)-* Article 70 Clause (1), okay. It reads as follows: "An Act of Parliament shall not be taken to contravene the rights and freedoms granted in this Chapter, if that Act authorises the taking of measures that are reasonably justifiable for dealing with a state of emergency".

Mr. Chairman, our interpretation of this Clause together with Article 129 excludes reasonable measures which would justify detention without trial. Mr. Chairman, if you look at Article 129 it says very clearly that the President may, with consultation of the National Council of State and so on, proclaim a state of emergency in Uganda in the following circumstances: one, when Uganda or part of it is threatened by war or external aggression or (b) in which the security or security of economic life of the country or that part is threatened by internal insurgency or natural disaster, or three, where there is some need for public safety defence of Uganda and so on. Mr. Chairman, assuming that a state of emergency is declared in Kampala today, and the government wants to take emergency measures, there are so many things which the government can do under that state of emergency without necessarily detaining people. What do we mean, the sponsors of this Motion? We are saying that if a state of emergency is declared, there are so many rights of a citizen including rights to such things like freedom of association, right to own property, right to move and so on. A government can say in a situation of a state of emergency declared in Kampala we are not allowing people to move. We are also telling People where the state of emergency is declared that, you should not do certain things like this. But we are objecting to a situation in a state emergency, Mr. Chairman, where the government of the time is saying that, because of the existence of the state of emergency, it is taking advantage of the state of emergency, to arrest Abu Baker Mayanja and say, you are detained for so long, and the case is being revealed every three months or so. But we are saying, *-(Interruption)-*

MR. ABU MAYANJA: Mr. Chairman, I am grateful to Hon. Omara Atubo who is giving way. I would like to inform him and the House that, under the Article 129 which he has quoted, but did not quote the whole of it, Clause (8) says this: "Subject to any restrictions imposed by this constitution, Parliament may by law enacted under Clause 7 of this Article Provide for the suspension of any fundamental human right or freedom during the period when a state of emergency is in force". When that is enacted, Mr. Chairman, then you need to protect the citizens of Uganda.

MR. OMARA ATUBO: Mr. Chairman, I think what my good friend Hon. Abu Baker Mayanja is saying, really strengthens my argument. Because as

Hon. Nabudere has said, those of us who were sponsoring this Motion wanted to look at it in a package with Article 129 and see how they could either be married or certain Clauses could be removed. And Clause (8) was one of the clauses we had targeted to have removed. Mr. Chairman, but we were advised by the legal and Drafting Committee that, that clause will be discussed at the appropriate time. Mr. Chairman, having therefore, stressed that point that any type of human rights could be dealt with under the state of emergency except detention without trial, may I, therefore, Mr. Chairman, remind this August Assembly that, we have already passed a provision under public interest. That is I think, Article 53, where we say no law will allow detention without trial. We have passed that and this is going to be such that, subject to Article 53(2)(1), and so on, which we have already said, public interest means no law will be passed authorising detention without trial. Furthermore, Mr. Chairman, if you look at Article 72 it says; "The existence of a state of emergency shall not affect the enjoyment of the right to human dignity life or fair trial, as guaranteed by this constitution". Mr. Chairman, this Article is under the human rights protection of state of emergency. If there is going to be trial within the state of emergency, is there a presumption that a person who is detained, is going to have a fair trial or if a person is detained, is not going to have trial? If there is going to be a fair trial, then let us go under the provisions dealing directly with fair trial.

So, Mr. Chairman, it is with this view - now, I am aware that government needs emergency powers. Governments do need emergency powers. But all I am saying is that, in this emergency powers - dealing with emergency powers, there should be no justification for detention without trial. You can do anything; you can restrict the movement of people under a state of emergency, you can move people by force from one area to another, you can restrict the freedom of association, you can restrict freedom of conscience, you can never restrict that people should not pray in that particular area because of the state of emergency, but surely, when you start going to the extent of detaining people under state of emergency and there is no fair trial, Mr. Chairman, I strongly object. I beg to support the amendment. Thank you, Mr. Chairman.

MR. SEKITOLEKO (Bugangaizi, County): Thank you, Mr. Chairman. Mr. Chairman, I share the sentiments expressed by the mover of this Mo-

tion. But unfortunately, I am unable to support him. First in our society, we must always have insurgency. There must be always insurgency, and these insurgencies will always be there. That is why we have made laws against such insurgencies. For instance, this law we are discussing seeks to protect the people affected in such areas to make conditions good for them. I do recall personally, I did live quite a number of years under a state of emergency. My county Bugangaizi, was declared a state of emergency, and we lived quite some time, under state of emergency. Now, we saw that there were a need, even if we were declared a state of emergency, to have at least a safeguard. For instance, people arrested to be - at least their relatives to be informed. We were living under a curfew, at least the time declared for curfew, to be extended probably up to about 7.00 p.m. or 8.00 p.m. Now, these conditions actually were necessary, and it is these conditions that, I think we are discussing. Mr. Chairman, it is very unfortunate that these laws have to be there, but they have to be there for the good of our people. I thank you.

MR. SABIITI (Rukiga County): Thank you, Mr. Chairman. There is one clarification I would like to get from our learned friends. When we talk of detention, does it always go with detention without trial? If that can be explained, then may be I could give my contributions. Detention, does it always go without trial? Or can there be detention when there can also be trial at the same time? Can that be explained to me, Mr. Chairman!

THE CHAIRMAN: I shall ask the Chairman of the Legal and Drafting Committee to give us his opinion.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. Yes there is a distinction between detention without trial and detention which eventually leads to trial. We have already dealt with, for example restrictions and detention in busy time, where we have put into place a mechanisms for ensuring that the rights of the suspects and persons who have been arrested are guaranteed. The detention which is reflected in these Clauses 71 and on wards, is a detention which arises out of emergency, as everybody has seen. When the conditions in the country are such that civil order and sometimes, the ordinary courts, are not in position to function properly. Hon. Omara Atubo gave one example where, for example, the country is under attack and the people are coming through, the enemy is coming through Kololo, and

emergency has been declared. During this operation, information comes that some of the residents in Kololo actually are assisting the enemy with food and other activities. Now, the people who are engaged in the war will be forced to arrest those people and detain them because the security of the country is at stake. Meanwhile, because they are continuing with war, the war is ragging on, the enemy is around, the courts have fled, the judges have been asked to go and hide, there is no normality for trying these people who have been arrested as suspected enemies of state. Consequently, detention would have to be without trial. That is why this mechanism for informing them, for making sure that their dignity is not done and so forth, are being put in place. I thank you, Mr. Chairman.

THE CHAIRMAN: But I think, Hon. Delegates, let us also - for the benefit of those of us who are not regularly associated with laws, begin to draw distraction to some of these matters. I hesitate to use the term. It was used only in one instance and elapsed. We have got under 51, an enumeration of rights which are elaborated in Chapter 5. I think that one is an agreed provision. Then today, we put in a provision to say, under certain circumstances, those rights can be derogated. Firstly, you do not interfere with others, and secondly, the public interest.

We have said, under those circumstances, public interest does not extend to detention without trial. But then we have a set of special provisions under 70 onwards, which anticipate 129, (7) and (8). Under those we are saying, these are not ordinary derogations because of the gravity of the matter. In many of the situations, the state is empowered actually to suspend these rights. Not even just derogating or restricting them but suspending them. After you have declared a state of emergency and when you have suspended them, the consequences of some of these could be requisition of people's vehicles by force, because you need to transport people. You can pass a law to that effect or you can detain people and therefore, I am saying, but if you do that, then the following procedure shall apply. So that it is not saying that what we passed relating to the question of detention without trial could not tie hands because that is part of a general derogation. But what we are looking at here is arising in the exercise of power as if they do so exercise them under the declaration of a state of emergency. And when you do that, Parliament is empowered, not just to derogate, but actually to suspend those rights during that period, if you read

that provision. And during the period of suspension therefore, there must be certain protection within in relation to the people who might be detained under it. I do not know whether I have made some sense.

So now, I know not all of us can contribute - I think Hon. Sabiiti, I think most of the arguments have been given unless you will have something new to add.

MR. SABIITI: Mr. Chairman, with that explanation, I think I should not talk much. I would rather request that you put the question. *(Applause)*.

THE CHAIRMAN: Let us now pronounce ourselves on the amendment by Hon. Kagimu, that Article 71 as it is to be deleted. That is the Motion and that is a proposition. I now put the question.

(Question put and negatived)

THE CHAIRMAN: Hon. Delegates, I do not know what that was meant to mean in view of the vote you have just taken. But now, we come to another series of amendments on that article. That being so, now that the article has survived the axe, we now start - I wish we had a way of ranking these. We now go back to 30 and ask Hon. Wasswa Lule - because it is or, paragraph (b). Just a moment. I take it that we have no proposed amendment on (a). We are also looking at paragraph (b) - Hon. Higiroy. And then there is another one on paragraph (b). The whole series of amendments are on (b). Now, let us see which one departs furthest, so that - because if there is one which - You see, there are two amendments here, there is one which Hon. Nekyon says he never had the chance to take through to the Legal and Drafting Committee. I would have liked to know how it reached together with that one of Hon. Wasswa Lule, which is also the same. I do not know whether Hon. Nekyon has read Hon. Wasswa Lule's proposed amendment. If you look on page 11 of the text.

But before you do that, you see, we have here - Hon. Adoko Nekyon had circulated an amendment, but apparently, he never had the chance to discuss it with the Legal and Drafting Committee. But it is on (b). Just like yours is on (b). What I am trying to ascertain is the differences between them. If they could be combined such that we do not have to move twice.

MR. WASWA LULE: Mr. Chairman, it would help if we had the correct wording

THE CHAIRMAN: Okay, can we hear yours?

MR. WASSWA LULE: There has been a mistake in that, (b) should have read, "*The spouse or other available next of kin of the person restricted or detained shall be informed of the detention or restrictions at the earliest possible opportunity and shall be permitted immediate access to the person*". So, they have got somehow in the drafting -

THE CHAIRMAN: No, but the words, the earliest opportunity are there, except that at the end -

MR. WASSWA LULE: - Yes, but the earliest practicable opportunity is referring to informing right, but the access is immediate. There is a reason - *(Interruption)*

THE CHAIRMAN: Can I hear from the Chairman of Legal and Drafting as to that text?

PROF. KANYEIHAMBA: Mr. Chairman, the way that this amendment is worded here is what was discussed and agreed with Hon. Wasswa Lule. But this additional amendment obviously is his own. And obviously we had not had time to reflect on it. The only thing is that it does make a difference. Because it is now combining not only to inform the spouse and next of kin, but also to give access, which really is a different principle.

THE CHAIRMAN: But it was giving access anyway, as it was. The only thing is that, what Hon. Wasswa Lule is saying is that the words, "*at the earliest practical opportunity*" should be in relation to information. And then put word "*immediate*" after the word permitted. Is that correct? To read: "*shall be permitted immediate access to the person*".

AN HON. DELEGATE: That is what we had agreed.

MR. NEKYON: My amendment actually amends Hon. Lule's amendment because, I do not see any good to it. Mine just brings it in the element of giving access at the same time that the information is being given to the relative. Instead of saying, "*as soon as practicable*".

MR. NEKYON: My amendment will be - may be I should read it. My amendment goes as follows. Delete Clause (b) and substitute the following: "*The*

spouse or other available next of kin of the person restricted or detained shall be informed of the detention or restriction and allow access to the person within 72 hours after the commencement of the detention or restriction".

THE CHAIRMAN: That is why I wanted to know whether - Hon. Chairman of Legal and Drafting.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. Hon. Wasswa Lule's wording where it says, "*as reasonable as practical*" is a matter that was discussed at length by the Legal and Drafting Committee. And we went to greater detail why it was preferable to any specific hours given, or even period of days, and he accepted the arguments of the Legal and Drafting Committee. When Hon. Nekyon wishes to amend that to 72 hours, I do not know whether it is necessary for the Legal and Drafting committee to go again into greater details of why we thought that the amendment as proposed by Hon. Wasswa Lule was more practical than specifying 72 hours. Mr. Chairman, I wanted clarification on that.

THE CHAIRMAN: The Chair was prepared to treat Hon. Nekyon's amendment as coming on the Floor to amend one where notice has already been given so that we would have to dispose of these first, before we could go to the other one. What I was trying to see was whether Hon. Wasswa Lule would be amicable to this sort of wording in which we do not have to go through a lengthy process. There is Hon. Higiuro who has his own different - Hon. Higiuro was seeking to amend from 72 to 48. Now, what would happen is this, if we have to proceed with Hon. Wasswa Lule's amendment, then we get it moved and seconded. If it is, then Hon. Nekyon could seek to make his amendment on it, which would actually negate it, and therefore, if passed would replace it. But Hon. Higiuro would then have to move an amendment to that of Hon. Nekyon to knock out 72 and replace it with 48. We would pronounce ourselves on this one, before we go back to Hon. Nekyon's then we come back. Depending on its fate. So, for us to move, let us ask Hon. Wasswa Lule to read his amendment and move it and then we proceed from there.

MR. WASSWA LULE: Thank you, very much, Mr. Chairman. The amendment, as we agreed and I still insist that, the wording which I used is the one that we - *(Interruption)* -

THE CHAIRMAN: You just read it out. We have decided that, we take that text.

MR. WASSWA LULE: Yes. I would like to point out certain anomalies in our papers. They have caused me a lot of confusion today. We passed Article 70, I asked the Chairman of the Legal and Drafting Committee, we passed Article 70, it was not on the sheet, we had agreed to harmonize it with Article 72 and to delete it. There are some other anomalies on our sheet.

THE CHAIRMAN: But you see, Hon. Wasswa, we proceed this way. If we have an article to which there is no proposed amendments, we only call it, then we propose it to stand part of the Draft Constitution and we carry it. At the time the House voted, we did not have any amendment on 70. Therefore, we could not visit it.

MR. WASSWA LULE: Okay, we shall proceed. But the amendment should have been there.

THE CHAIRMAN: Okay, well we did not have it!

MR. WASSWA LULE: That is what I was trying to point out that, there are several errors on these sheets. Article 71, paragraph (b) to delete paragraph (b) and insert the following: *“The spouse or other available next of kin of the person restricted and detained, shall be informed as soon as practicable of the restriction or detention, and shall be permitted immediate access to the person”*. The reason why, and I will explain why this text is different, originally, we had people being informed within 72 hours, and this is what we agreed that, inform people within 72 hours. We had wanted to reduce the number of hours. It was pointed out by - I remember it was said by Hon. Katureebe in the committee that by reducing the hours, it could not be practical. And he went further and said, that in fact even the 76 hours as such a restriction, it is not practical. In many cases, you might be able to inform the family earlier. But may be in these sort of calamities as Hon. Kanyehamba was pointing out where it is simply not practical in those situations to inform people in that time.

Now, when we said immediate, and immediate was to the access, so that as soon as relatives know that somebody is detained, they should be allowed to see that person immediately. That is where the basic difference and emphasis is. And that is why I am

saying that, the wording as put here was in error and should have been as I put it.

THE CHAIRMAN: Is that, seconded? So, it is seconded by Hon. Mayombo and Hon. Kanyehamba. Oh! Hon. Kanyehamba would like to make a contribution but not a secondment. He has yet to speak to his Motion. I was only seeking support for it on the Floor before he goes ahead. But let us read it out again if you do not mind. That *“the spouse or other available next of kin of the person restricted or detained shall be, as soon as practicable, informed of the restriction for detention and she be permitted immediate access to the person”*. Is that, how it is reading?

MR. WASWA LULE: Correct.

THE CHAIRMAN: Okay speak to your motion.

MR. WASWA LULE: The wording as I said, improves this particular clause. The fear we had about this - the way it had been worded, was that, it gave the state powers to hold somebody for 72 hours, and then inform the relatives or even to allow access to persons detained. So, by changing that wording, we now reach a situation whereby if you know of a person who is a relative or next of kin, who is detained, one is now in a position whereby they can now go and see the individual. They are permitted to access to that individual.

The advantage of immediate access to an individual who is detained is that inhuman and degrading treatment is normally meted out in the earliest hours of detention. So, by allowing for immediate access to detainee, we now reduce the possibilities of any inhuman and degrading treatment and tortures and things like that and it improves the clause as it stands. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Hon. Nekyon, do you want to persist with your proposed amendment? Because we had agreed that this can only come as an amendment to that one. Let us see how yours - he has to move his first before you can move yours. Because he is talking of 72 hours, you are talking of 48 hours. So, which one do you want to take 48 or 72? Okay now, Dr. Higiro is not going to move. What we shall do is modify yours before you move it. Because it is still with you and reads 48 as if it was part of your Motion, right from the beginning. Then we debate it that way.

MR. NEKYON: Mr. Chairman, I beg to move that Article 71 Clause (b) be deleted.

THE CHAIRMAN: No, now you are moving that Hon. Wasswa Lule's amendment be replaced with... then you read yours. Because you see, Hon. Wasswa Lule's amendment was seeking to delete the whole (b) and replace it in the wording he has, talking about information being given as soon as practicable of the restriction and detention and that, next of kin or spouse shall be permitted immediate access to the person. That is how it is reading. For you, you want to replace that with the following wording: *"The spouse or other available next of kin of the person restricted or detained shall be informed of the detention or restriction and allowed access to the person within 48 hours, after the commencement of the detention or restriction"*. So, you are in fact saying that, yours should go to replace his. If we carry yours, then his falls by the way side.

MR. NEKYON: Mr. Chairman, I beg to move that, Article 71 be deleted so that it will read as follows: *"The spouse or other available next of kin of the person restricted or detained shall be informed of the detention or restriction and allowed access to the person within 48 hours, after the commencement of the detention or restriction"*.

THE CHAIRMAN: It is seconded. Yes, go ahead.

MR. NEKYON: Sir, the reasons for my moving this amendment has already been well elaborated by many speakers who were discussing the previous amendments - further protection of the person who has been detained. We have heard many people saying that, when a person is detained, he must be properly protected by the constitution. Sir, all that we are trying to say is, if a state agent goes to somebody's house and says, your son has been detained, he should obviously say, you are free to go and see him now. Because for you to say that we have got your son for whom you have been looking over the last 72 hours or 30 hours without knowing where he is and then you say, you will be able to see him as soon as practicable, it does not make sense. It is a natural instinct of a human being that when he hears his son or his daughter is in trouble, he would like to go and approach the child immediately, to find out what actually happened, and how he is. The purpose of informing relatives is to pacify them, to re-assure them that the boy or daughter is actually safe and well. Therefore, I would like to hurry to the

prison myself immediately to see the boy and ask him how he is, what actually happened, what they did, what is being alleged that he did so as to prepare some defence for him. But if you say that, he has been detained, but you will be able to see him as soon as it is practicable, it creates suspicion in my mind, that the boy or girl has been beaten thoroughly and the state requires time for the wounds on the body to heal before I can go and see him. So this kind of thing is a torture to the parent, because he will now not know how to tell his relatives whether the boy has actually been detained or not. Maybe it is a hear say.

During the reign of Amin, many families were informed that their children have been detained, but they never saw them again up to this day. So, I want to remove that feeling of suspicion that somebody has been detained, but we cannot go and see him immediately. Maybe he is still suffering from head injury or his stomach has been broken and he is being stitched so, you cannot see him. Now, the information somebody is saying that, you cannot inform the relatives within, 72 hours or 40 hours. I think this is not reasonable. Here, we are not specifying the method of information. If you cannot give information through the Police organs, you can still communicate to the relatives by press or by radio. We have so many Police announcements on the radio. That so and so is missing and this is being heard everyday. If you fail to give information by delivering by hand, please use mass media. And this has been accepted in this country. Sir, I would like to stop here and beg Members to support the Motion which actually protects everybody's relative.

THE CHAIRMAN: Hon. Delegates, we had a Motion moved by Hon. Wasswa Lule, in it, he does not make references to time frame. This is really the essential difference. What Hon. Nekyon's Motion seeks to do is essentially to re-cast that of Hon. Wasswa Lule to provide for a time frame of 48 hours within which information and access should be given. Now, the Motion was seconded and has been moved.

DR. HIGIRO SEMAJEJE (Lwemiyaga): I am very pleased in the first place, to see that, Hon. Nekyon agreed with my original amendment of reducing the hours from 72 to 48 hours... Mr. Chairman, I move this amendment, because you can imagine that, when a person has been arrested, there is anxiety of the people, of those who love him, those who are friends and parents. We also know that, we

have a very bitter experience that in the past, somebody could be detained and you will just hear about it, you will never see him again. Now, we are coming to sense, we are creating a new Uganda, there should be no situation of that nature.

Mr. Chairman, when I was listening to the Legal and Drafting Committee, we were giving all sorts of excuses that, it will be difficult to inform a person within a given time. That they should say, as soon as it is practicable. Mr. Chairman, really that means literally nothing. It is just telling the one who has arrested you to take his time, and he may say it has not been practicable. So, Mr. Chairman, giving time limit is important. I would like to say that the Uganda we are talking about is not just going to be stagnant. The means of information are getting better and better everyday. We have even got circular telephones. We have got information by radio. This is the commonest system of all. We announce this for funeral, we announce this when somebody has got accident in Mbale, and he comes from a village as far as beyond Kisoro, but once it is mentioned on radio twice, the next of kin will be informed.

So, we are saying, Mr. Chairman, that, the information can be obtained as soon as this person's identities have been ascertained. So, let the arresting authority have the obligation by the constitution that the person taken, his relatives and friends must be informed, and the system will be there, we have got a way, of doing it. Therefore, Mr. Chairman, let us not just give a blanket to say, "*as soon as it is practicable*", that word I do not like. And I hope that, all of you here, Mr. Chairman, will agree with us that, there must be a time limit. And 48 hours is enough time for information to have reached RC I Chairman of the area, it would have reached the RC III Chairman, everybody in that area too will spread the news, so that the person knows.

Mr. Chairman, we know that, until your relatives and friends know about your arrest, even the habeas corpus will not come into effect. Because it is them who will come to your assistance. They are the ones who would come, go to the lawyers, they are the ones who would make sure that you will survive. Mr. Chairman, let us make governments and arresting authorities accountable. I thank you, very much.

THE CHAIRMAN: Hon. Matembe, you wanted some clarification.

MRS. MATEMBE: Point of clarification. Thank you, Mr. Chairman. I am seeking clarification. When the movers of that amendment came to the Legal and Drafting Committee, we discussed, we looked at hours 48 hours, 24 hours, we discussed in details, and we looked at different types of emergencies. Because emergency may not be the same, there is where it is easy and you can reach, there is where it is almost impossible to reach somebody. So, finally, having discussed and looked in details, we thought that really putting an hour limit was not a solution to a problem. And that is how Lule and the other movers and us reached this "*as soon as it is practicable*". Because we were looking at different situations of emergency.

Now, the clarification I was seeking was, since the movers of the amendment having discussed in details with the Legal Committee and having, you know, been convinced that, actually the hours may not be practical to be put here in the constitution, when a situation may be completely impossible for that hour to be achieved, we arrived at this one. Now, I wanted to know whether it is really proper to bring back the issue of hours when we discussed them in details?

THE CHAIRMAN: Okay, Hon. Matembe you have made your point. The position is this that Hon. Wasswa Lule has not departed from the agreement. Hon. Wasswa Lule has moved his motion more or less in the terms in which we agreed. He is not mentioning a time frame at all. But as you know, we agreed here that, while the original text must go to the Legal and Drafting Committee and we have used this other practice, that Members are free to move amendments to those amendments provided they bring them here in terms of amendments. What is happening now is that, Hon. Wasswa Lule has moved the Motion in terms in which there was more or less agreement. Hon. Nekyon has used his liberty to come up with a proposed amendment of Hon. Wasswa's to insert time and they did that in consultation with Hon. Dr. Higiroy. What we are now doing is to determine the fate of the amendment by Hon. Nekyon and Hon. Higiroy. If it passes, it will affect the status and the wording of Hon. Wasswa Lule's motion because we cannot go back. Most of it will have been changed and a lot of it will have been kept. If it fails, then we go back to Hon. Wasswa Lule's Motion. So, there is nothing really that is improper.

MR. ODOI ASOKA (West Budama): I support the amendment moved by Hon. Nekyon because it

gives an element of responsibility to the arresting authority to be accountable for their action, and also, it gives assurance to the arrested person as well as the relatives of the arrested person, for immediate action to be taken. But if you leave it at "as soon as practicable", who is going to determine how soon is practicable, because the arresting authority will not have the feeling of urgency of the person who has been arrested or detained. For this reason, you are in fact giving them the opportunity to take their time, and to react whenever they feel it is practicable for them, which he can take - as a previous speaker has said, it could take a year, could take six months, could take any time. So, I think that the person who has been arrested is actually - his rights have been interfered with. He is no longer at his own freedom and therefore, there is a need for us to put a time frame within which it will compel the arresting authority to be accountable and therefore, to be more responsible. In any case, why should they have arrested you if they are not prepared and ready to take immediate action in redressing this situation? And therefore, I support the amendment by Hon. Nekyon. Thank you, very much, Mr. Chairman.

MR. LUBEGA: I would like to support the amendment by Hon. Adoko Nekyon, and by doing so, I want to dispel the fears of Hon. Delegates who think that, it will be impracticable to fix a time frame. Mr. Chairman, there are very many ways of passing information. In legal practice, someone else can even be served on public places - or through public places by fixing a notice on a court wall, on a gombolola, and in many other ways. There are also procedures which allow for the publication of publicity or for information to go through the press. And if the arresting officers utilized all these methods including even the press, I do not think the fear that information should be served on the relevant people should be withheld.

THE CHAIRMAN: Sorry, Hon. Mayombo is seeking clarification from you.

LT. MAYOMBO: Thank you, Mr. Chairman. Mr. Chairman, although I support Hon. Lule, I have been persuaded to support Hon. Nekyon, but I have only one problem, before I support Hon. Nekyon. When we say, "*shall be informed*", do we include substituted service? If we had written "*shall be served*" that is a different thing but we are saying "*shall be informed*". If they accept that, radio or media or publication of information, is sufficient

information, I will be willing to support it. I believe Mr. Chairman, that, this is a very dangerous situation, the rights of the people are being taken away, service must be personal. Somebody must receive the information, you do not just display it. I think people have received it. So, if they accept the media as a method of service, or news papers as a method of service, I will support them, Mr. Chairman. But I seek clarification on what we mean by "*shall be informed*". Thank you.

THE CHAIRMAN: - "*Shall be informed of the detention or restriction, the spouse or the next of kin*". Now, what Hon. Nekyon's amendment is saying is leaving it open, the method of information is not restricted. That is how I understand it anyway.

MR. LUBEGA: Mr. Chairman, this is precisely what I mean. The method of information was not restricted in the amendment moved by Hon. Nekyon. I think it will be too much to expect service on a person, when even in legal practice, as I have mentioned before, they have all sorts of problems which have let the service of summons to be served not always on the person. Substituted services have been used and in supporting the amendment of the Hon. Nekyon, I also understand. My interpretation is that the service can be communicated or rather the information can be communicated in various ways which may be available to the arresting officer. This is including also substituted service and even radio. Thank you very much.

MR. LUBOWA: I support the amendment moved by Hon. Nekyon, for the fact that it is very important we put a time limit. I would imagine a situation whereby perhaps, the NRC Members put it in the Statute to the CA that the constitution should be completed as soon as practicable. I do not think the Business Committee would be now, looking for methods of trying to see how we go through the thing by December. So, in this case, it is very important that we put a time limit of 48 hours and therefore, the authorities will make it a point to ensure that, at least, those concerned are informed and there is accessibility within the 48 hours. I am very much in support of Hon. Nekyon.

THE CHAIRMAN: Hon. Chairman of Legal and Drafting, you want to clarify some thing for us?

PROF. KANYEIHAMBA: Thank you Mr. Chairman. I am seeking clarification. Because really, I

thought that the whole purpose of this is that the spouse or the next of kin should actually be informed. Now, when you accept substitute service like that, people shall be informed on radio, or you pin information on property, then you are allowing government even to make an announcement after mid-night when everybody has gone to bed and they can prove that they actually informed these people. That will definitely defeat the whole purpose of this exercise. So, Mr. Chairman, I wanted to find information. Is the intention of the movers other than Hon. Wasswa Lule's simply to put it in the constitution, or is it designed to really inform relatives personally, so, that they can go and see the detained persons? Secondly, Mr. Chairman *-(Interruption)-*

THE CHAIRMAN: But you see, you are seeking clarification. Now, you are making an argument.

PROF. KANYEIHAMBA: Sir, what I was going to say is that, I wanted to seek information, because the arguments that I have heard, seem to be dealing with a normal situation. I thought that, Mr. Chairman, we are dealing with an emergency situation. Where bridges have been broken, where these things have happened. So, I wanted clarification from the movers on those two points Mr. Chairman. I thank you.

THE CHAIRMAN: I think really, we should not waste any more time. Even the provision as it stands today, it does not talk of personal service. It talks of the spouse or the available next of kin of the person, shall be informed of the detention. Very much, like the wording in this one. So, what we are doing now is really splitting us. I think let us vote on it. Let us vote on the motion by Hon. Nekyon to delete and replace the one of Hon. Wasswa Lule in terms read out. *"The spouse or other available next of kin, of the person restricted or detained, shall be informed of the detention or restriction and allowed access to the person within 48 hours after the announcement of the detention or restriction"*. I now put the question.

(Question put and agreed to)

THE CHAIRMAN: What now has happened, (b) has been repealed and replaced with the wording I have just read out. There is now a proposed amendment to (c). There is one amendment by Hon. Omara Atubo, Hon. Wasswa Lule, Hon. Medi Kaggwa, Hon. Edward Kasole, Hon. Mayombo

and Col. Serwanga Lwanga to amend paragraph (c) by deleting the word *"Thirty"*. I do not know how. Whether they intend to re-word it properly. There was also a proposed amendment by Hon. Higiro, to replace *"Thirty"* with *"Twenty one"*. Now, that being so, we start with one which seeks to delete *"Thirty days"* completely. Because if it does, there is no need for us reducing nothing to Twenty one.

MR. OMARA ATUBO: Thank you, Mr. Chairman. Mr. Chairman, let me make an immediate correction. We did not seek to delete completely Clause (c) Article 71. In fact there is a corrected version, Mr. Chairman, which goes together with the one which was circulated yesterday. It was corrected to 14 days. Mr. Chairman, it would serve no purpose if we were to seek to delete completely 71 (c).

THE CHAIRMAN: No, the one I have here does not say so.

MR. OMARA ATUBO: There is a corrected one, Mr. Chairman. *-(Interruption)-*

THE CHAIRMAN: Which says, delete 30 days?

MR. ATUBO: No. There is another one, Mr. Chairman, which talks of 14 days, corrected page No. 31. They are all numbered 31 Mr. Chairman.

THE CHAIRMAN: The one I have had a full stop after removing 30. Now, we proceed with the one of Hon. Omara Atubo, which talks of replacing 30 days with 14, and if it passes, Hon. Higiro has no need to move his, because it was talking of 21 days. So that, if we take the lower figure, we do not go back and take the higher figure.

MR. OMARA ATUBO: Mr. Chairman, the purpose of 71 (c), speaks of not more than 30 days, and it is for publication, notification and gazette and so on. Mr. Chairman, we think that, 30 days is the upper limit. The government gazette, as we know, comes out every week on Friday. We think that, a person who is detained, restricted under the provisions of this article, the government should come up. All that we have been doing under the fundamental rights and freedoms is to give as limited time as possible to the government. They have now talked of from 72 hours, we have come down to 48, there were also provisions dealing with immediate information, when a person is arrested. So, Mr. Chairman, while we are aware that the government gazette

comes every week, we are also trying to balance a situation where a person may be arrested on a Thursday and it is not possible for the government to come up with publication the following day on a Friday. So, the 14 days we have come up with is a compromised version. There were those who were talking of 7, others were talking of 21, but we believe that within 14 days, the government should be able to have a publication to inform the government printer to set its machine and to have this government gazette out and inform the public that certain people have been detained.

Mr. Chairman, this is one of the checks on possible abuse of human rights, which I think is very important for us to include. So, Mr. Chairman, I beg to move. Thank you.

THE CHAIRMAN: It is seconded.

MR. OMARA ATUBO: The motion is that, we delete 30 days and insert 14 days.

THE CHAIRMAN: I have not put the question yet. Let me put the question on 71 as amended. The question is that 71 do stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Hon. Delegates, we have come to the end of today's time having done quite a substantial amount of work and effected quite a number of amendments. We shall proceed from there tomorrow but before we adjourn, I think there is a committee meeting of the Legal and Drafting.

MR. BEN WACHA: Mr. Chairman, Sir, we wanted to deal with other amendments from 75 up to the end of this Chapter. So if Members who have amendments on this chapter could meet us here at 3.15 p.m., we will deal with the rest of the Chapter today so that the House has sufficient amendments to deal with from tomorrow. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, there is yet another announcement but before we make that announcement, can I make a proposition and this announcement relates to the Rules and Orders committee. Hon. Members, you know that for the reasons that need not be repeated, a vacancy was created in the Membership of the Rules and Orders Committee by the fact that Hon. George Masika had to go back to the people and he was a Member of that committee. But now having come back, I would like to suggest that he goes back to the committee unless there are any strong objections.

MR. OMARA ATUBO: Mr. Chairman, I would like to announce that the Rules and Orders Committee wanted to meet today but because of submissions we have had from Hon. Colleagues, we are unable to meet and also because of some important commitments in Parliament. I think the Minister is going to move some Motion and other Bills. So most Members have come to me and said we should postpone our meeting. So, I am first of all informing the Members of the Rules and Orders Committee that today's meeting at 2.30 p.m. is being postponed. I will inform you of another date. The second one is that if any Member of this House has anything to do with the issue on rules and orders and so on, we are meeting in the course of next week. Please, give your written opinion or oral to us as time goes on. Thank you very much Mr. Chairman.

THE CHAIRMAN: Thank you. With those announcements, we come to the end of today's proceedings and I adjourn the Constituent Assembly to tomorrow, 8.30 in the morning. Thank you.

(The Constituent Assembly rose and adjourned until Friday, 16th September, 1994 at 8.30 a.m.)