



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

FRIDAY, 16TH SEPTEMBER 1994

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 2171]

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Friday, 16th September, 1994.

(The Assembly met at 8.30 a.m. in the International Conference Centre, Kampala.)

PRAYERS

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

The Assembly was called to order

COMMUNICATION FROM THE CHAIR.

THE CHAIRMAN: Hon. delegates, I had hoped to give a report regarding the meeting we had with the Business Committee this morning, but my remarks are not ready. So, I intend to do that on Monday, when we resume. We can now go to the next item.

REPORTS FROM COMMITTEES.

THE CHAIRMAN: Do we have any report from the committees? Hon. Ben Wacha, do you have any report to make?

MR. CHANGO MACHYO: Point of order. Mr. Chairman, item No. 2 is communication from the Chair and you told us you had nothing to tell us. Item No. 2, is your Communication and you have just told us you will communicate on Monday. Item No. 3, is statement by delegates. Now, how does item No. 4, come before No. 3.

THE CHAIRMAN: No, the Chair has not given authority to any Member to make a statement and that being so, we do not need to go through that routine. If there is a statement to be made, it normally gets to the Chair and the Member wishing to make it, gets it cleared before it is made. That is what the Rules say. Thank you.

MR. BEN WACHA: Mr. Chairman, as the House might have noticed, the new sheet for proposed Amendments is not yet out. However, the Legal and Drafting Committee met yesterday and considered 40 proposed Amendments from Article 72 to 83. Now, as usual, we managed to convince movers of several Amendments to merge their Amendments with other movers and sponsor them jointly. In this respect, Hons. Dick Odur, Oneti-Batia, Eresu, Kulany and Sam Engola, for example, who had similar Amendments regarding 76 (ii), agreed to cosponsor their Amendments to remove the words

'National Council of State' and replace it with Parliament. Now, again as usual, we left open to those delegates who were dissatisfied with our advise and explanations to proceed and move their proposed Amendments before the House. Now, the end result, Mr. Chairman, is that, the new sheet which should be coming before the House shortly, has six proposed Amendments to be considered by the House in respect to Article 72 to 83. That Sir, is our Report for this morning.

THE CHAIRMAN: Thank you. This means that we can proceed to consider those which appear on the report dated 14th at paragraphs 36 and 37.

MR. BEN WACHA: That is right Sir and our information is that, as far as Article 72 is concerned, we should be having two different Amendments: one by Wasswa Lule, as indicated on the sheet and another one which was discussed yesterday, by Hon. Tiberio Okeny which seeks to depart slightly from the proposed Amendment by Hon. Wasswa Lule.

THE CHAIRMAN: Is Hon. Leander Komakec in position to present the amendment of Hon. Tiberio Okeny when we come to it, if he is not here? Hon. delegates, you have heard the Report from the Deputy Chairman of the Legal and Drafting Committee, Hon. Ben Wacha. The other aspects of the report will be coming as we go along, but when we started on Monday, we had visitors in the gallery from Kampala Parents, who had come to see how you determine their future, they came on Monday and also we had a request that a second group comes today. So, in the gallery, we have another group of young Ugandans from Kampala Parents' School, who have come to join you in Constitution-making and see how you determine their future. And I would like the House to acknowledge their presence (*Applause*) - and to welcome them to our today's proceedings. You are welcome.

Now, we go to Article 72. On Article 72, there is a proposed Amendment sponsored by Hon. Wasswa Lule. I give the Floor to Hon. Wasswa Lule to move the Amendment.

MR. WASSWALULE (Rubaga Division North): Mr. Chairman, we had agreed with Hon. Tiberio Okeny to take his amendment in favour of mine. So, I am dropping mine, but I am giving the text to Hon. Komakec to move the Amendment.

THE CHAIRMAN: But do you have the write-up; because I do not have a copy?

MR. WASSWA LULE: Unfortunately, Hon. Okeny has just gone to get the write-up typed out.

THE CHAIRMAN: I can see him coming. Hon. Okeny, do you have a copy of the text you want to present, so that the Chair has the benefit of it as well?

MR. TIBERIO OKENY (Chua County): Thank you, Mr. Chairman. I am sorry for delaying the House in getting the paper ready. Now, Mr. Chairman, I pray this House to accept this Amendment to Article 72 by deleting it and re-wording it in order to provide for non derogation from rights during the period of emergency or operation. And it reads as follows: *The existence of a state of emergency shall not derogate the rights to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment and the right to freedom of thought, conscience and religion or fair trial as guaranteed by this Constitution*. Mr. Chairman, *-(Interruption)-*

THE CHAIRMAN: You said you had only one copy, let me read it out. If passed, it is intended to delete Article 72 which reads, *The existence of a state of emergency shall not affect the enjoyment of right to human dignity, life or fair trial as guaranteed by this Constitution*. The proposed Amendment would read: *The existence of a state of emergency shall not derogate from the right to life, the right not be tortured, or subjected to cruel, inhuman or degrading treatment or punishment and the right to freedom of thought, conscience and religion or fair trial as guaranteed by this Constitution*. That is the proposed Amendment by Hon. Tiberio Okeny Atwoma and seconded, I presume by Hon. Komakec and Hon. Wasswa Lule - I think Members have taken the essence. Can Hon. Tiberio Okeny present his Amendment. Hon. Tiberio Okeny, please.

MR. TIBERIO OKENY: Mr. Chairman, as I said earlier on, the purpose of seeking this Amendment to this Article is merely to enshrine in our Constitution a derogation clause not to violate the rights of the people; even if the country were under a state of emergency or during perhaps operations, certain rights of the people should not be derogated. So, Mr. Chairman, this is yet another very important Motion to introduce a Clause to safeguard possible abuses of

human rights in our Constitution, since the country has had more than enough of its share of atrocities done to the population of this country, during both the state of emergency and operations.

Uganda, being one of the Third World countries whose leaders are vulnerable to temptations of neocolonialism, has to perpetuate their ruthless exploitation of ignorance of our people and therefore, to dominate over us. Mr. Chairman, when saying this, I should not be misconstrued as only meaning our past colonial masters, no, I am including some of our notorious local leaders who have stuck to guns as the only means of ascending to power and maintaining themselves or oneself in power for selfish ends. When doing this, many lives had been lynched, properties destroyed or looted and the country experienced unprecedented atrocities of untold suffering under the cover of state of emergency or operations. This, Mr. Chairman, is very fresh in our memory, particularly the case of 18 political leaders from the North including myself, who were physically and mentally tortured and suffered indignation in many forms which continues up to date, as we, the victims have not as yet been paid due compensation for the damages, although it was agreed to be settled out of court. Let, therefore, Mr. Chairman, this august House stand warned that this can still be repeated and is now operative in Acholi land as I speak now. I earnestly, therefore, implore this august House, to tighten their belts to relieve the country of such monstrous behaviour by passing this Motion.

Mr. Chairman, I think this Motion is within the ambit of all the provisions of International Convention and I think it will only be proper for this august House to endorse this, so that, we all should rest in peace. When I say that there are some people who are acquainted with the 'rest in peace' of the dead - "Let his soul rest in peace" - No, I mean the corporal resting and mental resting when somebody is still alive. Mr. Chairman, by passing this Motion, we shall certainly come to the map of the international community that we are a country very much concerned about our human rights and we will very jealously protect it in our Constitution.

Mr. Chairman, with these few remarks, I hope all the Members whose freedom lies on a provision of this kind, will certainly not hesitate to have this Motion by making it part of the Constitution. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. delegates, before we begin debating the Motion I read out earlier, I do not know whether copies have come through, but we have to read it again. It is in these words: *'The existence of a state of emergency shall not derogate from the right to life, the right not to be tortured or subject to cruel, inhuman or degrading treatment or punishment and the right to freedom of thought, conscience, and religion or fair trial as guaranteed by this Constitution'*. May be I could clarify one or two things so that we debate it knowingly and then we can proceed faster.

As I said yesterday, Article 51, sets out rights and then they are elaborated in that part of Chapter 5, up to Article 69. Yesterday, we inserted a general derogation clause which enables Parliament during normal times to be able to pass laws that derogate, but only to the extent allowed by that derogation clause. Then, we come to a situation of a state of emergency which is envisaged under Article 129 to be declared in accordance with procedures laid out there. In that Article, particularly, Clauses (7) and (8), they say that where a state of emergency has been declared, then Parliament has power to pass laws, some of which would have the effect of suspending the rights and freedoms guaranteed under Chapter 5. But, article 72 is saying that even if there is a state of emergency, and even if Parliament has been given power to pass laws, Parliament should not pass laws that would have the effect of permitting indignity to the human being: treatment which is undignified: nor should Parliament pass laws that would affect the right to life or affect a fair trial. This is an exception, so that, even during state of emergency, Parliament cannot have those powers. That is my understanding.

Now, Hon. Tiberio Atwoma is, I think, elaborating on some of these, like for instance, the existence of a state of emergency shall not affect the enjoyment of the right to human dignity. That could be a summary of saying, there should be no cruel, inhuman or degrading treatment or punishment. In other words, he is being more detailed, except that he has brought in also, the other rights, like conscience, religion, thought and so on. I thought, maybe, I should make my understanding clear to the Members, so that we limit the extent of debate on this matter.

Hon. Chairman of Legal and Drafting Committee would like to obtain a clarification - or do you want to clarify? Which one? That is on behalf of the committee.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. The Legal and Drafting Committee, Sir, had no problem with this Amendment, except, that we agreed on the content which has now changed. Mr. Chairman, the idea is, as you have very ably put it, that we are trying to protect in this section, rights which we should call absolute rights. In other words, rights which can never be affected in any circumstances, even if there is a state of emergency. And we had enumerated them and agreed with Hon. Okeny, that some of these which he has included, actually cannot be accorded that right. We had enumerated the right to human dignity, fair trial, freedom from torture, freedom from inhuman and degrading treatment - those we discussed with him and we said, those could be accorded that. However, if you include the right to life, we have already passed an Amendment which allows punishment - a death punishment. Therefore, it cannot be absolute.

Secondly, on the issue of religion. Sometimes conflict in religion is the cause of the conflict and it may be necessary for example to round up people who are so fanatical that they are trying to disturb the country - that cannot really be absolute. So, we are a bit concerned, that having agreed with him, he has gone back to the original proposal and included rights and freedoms which cannot really be absolute. The ones that we agreed with him are the ones that we have enumerated and we have no problem with him moving that, but when you include rights which we have already passed, clauses which make them conditional, then they cannot be included in this Section, Sir, because that will be a contradiction. That is the clarification. I wanted to make, Sir, that we should, if we are to pass this law and for me, I support it, we should confine it to the rights which all other people know to be absolute, these cannot be affected by emergency. These are rights which we cannot derogate from. But if we mix with them with others, which we have already derogated and which are covered by other clauses of derogation, then we are really not achieving the purpose which the honourable Mover had intended. I thank you Sir.

THE CHAIRMAN: Yes, but did you seek to include the question of right to life? I thought right to life is already in the text as it is, even before Hon. Tiberio Atwoma brings it in. I thought they were saying, that you cannot say that Parliament can pass a law that removes the right to life. It is a fundamental right. There are limited areas in which life may be prejudiced.

PROF. KANYEHAMBA: Mr. Chairman, at the moment we did not abolish capital punishment. Therefore, Parliament can pass a law that for the commission of a certain offence, your life can be forfeited. Therefore, that law will make that right not absolute, Sir. This is the point we are making.

THE CHAIRMAN: But I thought that this is trying to restrict the capacity of Parliament to pass laws during states of emergency that would be draconian with relation to life. Even in article 72 it is quite clear, but the additions as far as I can see, are only in the field of 'thought, conscience and religion'. Otherwise, the right to a fair trial, the right to dignity, and the right to life are in article 72.

I would like to ask Hon. Tiberio Atwoma, whether he intends to continue with the Motion as it is, given the explanation by the Chairman of Legal and Drafting Committee. Because, I think the difficulty they were having with the reference to religion is that the declaration of a state of emergency might itself have arisen from some religious conflicts. Now, how do you handle a situation like that one? Hon. Atwoma, please.

MR. TIBERIO OKENY: I am very much obliged to the explanation given by the Chairman of the Legal and Drafting Committee and your explanation. My problem this morning with the technical drafting committee was, the paper which was never out in time, so I preferred to read what I had before me. So, that advice is well taken that those parts that were given to be the subject matter of the declaring emergency, like religion may bring controversy. With this explanation, I concur. *-(Applause)-*

MR. WASSWALULE: Mr. Chairman, it is unfortunate that at the time when they discussed this proposed amendment in the Legal and Drafting Committee, I was not there, but we had agreed with Hon. Okeny's text. I do not believe that you can arrest people on grounds of discrimination but you can arrest them or detain them because of maintaining order. So, the objective of apprehending people is not the fact that they all come from one religion or one tribe but because there is need to maintain order. So, I do not think that conscience and religion should be deleted. In fact, on the list, the Amendment as I have got it, should also have protection from slavery and servitude and I would like to move that we include those two on the list. Because that will meet the international standards as Hon. Okeny earlier referred. So, I think we should leave the words.

THE CHAIRMAN: But I think we are not together there. The Chairman of Legal and Drafting said in his discussion with the committee, there was an attempt to convince Hon. Tiberio Atwoma that some of these new inclusions could create a problem. You seem not to agree, for instance, God forbid, supposing there was a battle between the various branches of Christianity - the Catholics and Protestants who are not few in Uganda - and there was a state of emergency declared over Kampala because of this fight. Don't you think that Parliament would be justified to pass a law suspending their right to practice their religion for a while until the situation had been sorted out? This is what I was trying to look at and thus, I think, for Hon. Tiberio Okeny having agreed that maybe this could create a problem - You do not seem to agree.

Now, what we are left with, is a situation which should proceed as this, that Hon. Tiberio Atwoma has moved a Motion, it was seconded, he is prepared to delete certain parts of the matter that he had put in the original one, because of the explanation given by the Chairman of the Legal and Drafting Committee. And if it creates a problem, because we already had the Motion on the Floor, we could proceed by formal amendment, so that we debate the Amendment but, I think, Hon. Wasswa would like to include something more about 'slavery and servitude'. Now, we could start with removing those which, if so agreed, seem to offend the provisions of article 72 as it is now and then we can see whether we take on the question of slavery and servitude. So, my advice is that, we proceed by formal Rules by way of Amendment because there is some kind of disagreement between people who are supposed to be sponsoring it together. Now, the Chair cannot move Motions. I think let us hear from the Mover first.

MR. TIBERIO OKENY: Mr. Chairman, as it appears, that probably Members are also interested to have this discussed as originally drafted, of course, taking into consideration the explanation given now before them, by the Legal and Drafting Committee. I would prefer that we proceed with it as originally proposed, then if the Amendment as you have already mentioned, that it should come forward to delete or add - that will be up to the House, because it has now become the property of the House.

THE CHAIRMAN: Thank you. I agree with you.

PROF. KABWEGYERE (Igara County West): Thank you, Mr. Chairman. I have listened to Hon. Atwoma's presentation, which I agree with and share, stems from a mistrust of Government, because we have had bad Governments and we have good reason now to mistrust them. But I would like to look at the other side, where a state of emergency is declared genuinely to solve a national problem. We seem, all the time, to be thinking in terms of a bad Government declaring a state of emergency which is in the interest of that Government against the people. So, I think that area must be clarified. That is one.

Two, the only way to guarantee that the rights of the citizens are not abused is true enough to have a Constitution that defines how they should be enjoyed but on the other hand, and more fundamentally, is to make sure that you do not get a bad Government which abuses those rights. So, in my opinion, Mr. Chairman, the first ground is what has been presented by Hon. Kanyeihamba - a technical ground. That is which says, that the amendment as proposed now mixes the fundamental rights with what you could call second generation rights. I think that one is a clear ground on which to reject the amendment.

The second ground is that, the way it is phrased, it is certainly clumsier, than article 72 as presented on page 27. I think it is clumsy and we are not here writing a book; we are trying to put something that can be quoted. If you read article 72 as it is now, *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*. A primary school kid like the one listening now, could pick it there and then. But you listen to this. *The existence of a state of emergency shall not derogate from the rights to life, the rights not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment or the rights to freedom of thought, conscious and religion or fair trial as guaranteed by this Constitution*. Now, it is a mouthful and I think I would oppose their Amendment. Not that I do not agree with the reasons given, the reasons given are genuine, and we have all agreed but on the technical grounds and on the nature of its formulation. Mr. Chairman, I oppose the Amendment.

MR. KWERONDA RUHEMBA (Kajara County): Thank you very much, Mr. Chairman. Mr. Chairman, I think Article 72, as written in the Constitution, was intended to protect the rights spelt

out in article 54 which says that, *No person shall be subjected to any form of torture, cruel, inhuman, or degrading treatment or punishment*. But article 72 does not stop there. It goes further and guarantees right to life and fair trial.

Mr. Chairman, the Amendment by Hon. Tiberio Atwoma, is simply wordy, it is a bit clumsy and it is not even easy to comprehend by the ordinary person. Mr. Chairman, if we pass Hon. Tiberio's Amendment, I think we are likely to make it more confused and make it very difficult for the Government to operate during the state of emergency. Because as you rightly put it, some religious affiliations could insist on going to Church when there is chaos ensuing in that area where there is a problem and certainly, emergencies are declared not because we like them, but because there are certain conditions prevailing which necessitate restricting the Movement of people which is intended to protect the lives of the people. And Mr. Chairman, - unless we are intending to frustrate future Governments, - but if we are not, I think we should carry Article 72 as it stands in the Draft Constitution because it is brief, it is precise and it is even directing us to article 54 which is about protection of human rights. So, I would like to oppose Hon. Tiberio's Amendment on those grounds, Mr. Chairman.

MR. OWINY DOLLO (Agago County): Thank you, Mr. Chairman. Mr. Chairman, I found the argument by Hon. Kabwegyere rather strange in opposing Hon. Tiberio's proposed Amendment. Mr. Chairman, I stand to be corrected. We would not be wasting time here today if all Governments were made of angels. We legislate not for good government, we legislate so that in the event of somebody intending or seeking to curtail the rights of the people, then there are those legislations which can point out such persons. When we legislate and allow Governments to declare a state of emergency, we know that this state of emergency if they are declared in accordance with the law, they are for the good of the nation granted. But then, it should not mean when a Government is allowed to declare a state of emergency in the interest of the nation, it can now go ahead and operate in an area where a state of emergency has been declared with impunity. Definitely, there must be some road blocks in the operations of Government.

My quarrel with Tiberio's Amendment, which is partial, is that many of those things which Hon.

Tiberio seeks to add by form of Amendment are actually covered by the phrase, 'human dignity'. Torture, cruelty and what have you, are covered by the phrase 'human dignity'. If we proceed to enumerate torture, cruelty, and maybe three or four of them, and seek to substitute them for the phrase, 'human dignity', then we run into the danger of actually saying, anything outside the four words does not amount to human dignity. Speaking as a lawyers, I know in the legislative interpretation there is such a thing like *ejusdem generis* i.e all things or birds of the same feather to use the common parlance.

So, I would prefer that we use 'human dignity' instead of enumerating seven or six words; we retain life, we retain fair trial and actually see if there is anything else left out.

In my mind, I think there is nothing which is left out. I would partially oppose the Motion for those reasons.

MR. RUZINDANA (Ruhama County): Mr. Chairman, I would like to support the original Article to remain as it is, including the word, 'life'. These things which are being added will actually make the Article less effective than the original one by narrowing the rights to which this Article applies. Therefore, like the previous speaker, although there is nothing wrong with these rights which have been included by the Amendment, human dignity is much wider than the rights that have been enumerated here and it covers all of them. And unlike the Legal and Drafting Committee, I think the right to life should be protected during emergencies. In other times, there is enough time for the courts to apply the legal standards and so on, but if we exclude the right to life in emergencies, we may license violation of the right to life, because the courts may not have time to consider the other exceptions when life can be taken away. So, I think the right to life should remain as it is in the original Article.

I would like to oppose the Amendment of Hon. Atwoma because it narrows the protection of these rights during emergencies. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Atwoma, are you trying to respond or you want to assist the House?

MR. TIBERIO ATWOMA: Yes, Mr. Chairman, I would like to respond in this form, that as I have

seen, the Chairman of the Legal and Drafting Committee came to us here, and I will ask your indulgence if you could suspend the debate on this; go to the Legal and Drafting Committee. Because it was technical aspect which has delayed the way how it was to be worded as it was agreed in general committee meeting.

THE CHAIRMAN: You see, Hon. Atwoma, we have already spent some time debating it, but I think the strongest reason against you, is the one advanced by Hon. Owiny-Dollo, that you are inviting a narrowing down of the rights which article 72, as it is, gives. Because of a very technical rule in interpretation of Statutes and Constitutions, when you enumerate, then the Courts will assume that you have said all you wanted to say and nothing else should be said. Now, are we saying that human dignity is only these? Or, there are other situations? Let us hear clarification from Hon. Member for Ayivu county.

MR. NYAI DICK (Ayivu county): Mr. Chairman, I am a little lost; because whereas I buy Owiny Dollo's argument, article 72 says human dignity and goes ahead to list life and fair trial. I am not so sure that in law and in interpretation, that which is not mentioned, may be derogated. In view of that, Mr. Chairman, if you can help to clear my confusion, I would beg that since there is already an apparent mixup between the sponsors of the current proposed Amendment and our Legal and Drafting Committee and whereas I think the House has agreed that there is a seed of goodness in this proposed Amendment, although it is badly worded, at the moment, I would pray, Mr. Chairman, that we allow this to go back and they re-consider it, and come out with a better formulation. Because we may be throwing out the baby in the dirty water.

THE CHAIRMAN: Hon. Okalebo, we should now come to a conclusion soon.

MR. OKALEBO (Bukedea County): Mr. Chairman, there is nothing to refer back to the Legal and Drafting Committee on this subject. (Applause) I think the matter has been brought on to the surface for us to decide now, and it is so clear that the Amendment as proposed by Hon. Okeny Atwoma, wishes to add, 'freedom of thought, conscience, and religion'. Hon. Kanyeihamba has ably told us and I agree with him that these rights, the three named are not absolute and as explained by the Hon. Chairman, the same may be the cause leading to an

emergency or declaration of an emergency. So, we cannot insist that this matter goes back to the Legal and Drafting Committee for only adding these three words which are well taken care of in the present context of the Article itself. The expression 'human dignity' is not one single item; it is a sum total of many other things and rights. So, this one I think gives even a wider ground when it comes to interpretation.

Therefore, Mr. Chairman, while I am saying that I do not support the Amendment, at the same time, I do not support it going back to the Legal and Drafting Committee. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, I think we have had enough discussion on this. I think let us make a decision, whether we retain what we have or we take Hon. Atwoma's proposition. Let me put the question.

(Question put and negatived)

THE CHAIRMAN: That was the Amendment we had on article 72. Now, I put the question on article 72, that article 72 as it is, stands part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: There is a proposition to amend Article 73 by Hon. Leander Komakec, that is item 37 on the distributed report, dated 14th September. I will ask Hon. Komakec to present his Amendment.

MR. KOMAKEC LEANDER (Aruu County): Thank you very much, Mr. Chairman. This Amendment is really in line with what we have already passed, with the exception that the time that is given for three months, when people are detained can be reviewed. I find three months which is over 90 days, too long. And I think in three months a lot could happen, evidence can get lost. I think people who may be innocent, who may not be dangerous to society or their liberty should not be restricted unnecessarily for as long as three months. Mr. Chairman, one of the reasons why I am proposing this is that, it is envisaged that we shall have a review commission which will be permanent and we think if there is a Commission, which we hope will be passed in this House, operating and working full time with pay from the Consolidated fund it should be able to visit peoples whose liberties have been restricted under the state of emergency.

So, I would like to reduce the three months to 30 days because there will be full time people to do the work. I beg to move.

THE CHAIRMAN: Is that seconded? Hon. Wagira, do you want to speak to this?

MR. WAGIRA MOSES (Kibuku County): I would like, Mr. Chairman, to support this Motion; because when we look at life in detention, a minute is almost a year and since we are considering establishing a permanent Human Rights Commission to review the plight of these people, the shorter the intervals to which these people have attention the better for the person in detention. Mr. Chairman, you will realise that as the mover of the Motion did put it, it is very possible that evidence especially evidence of torture may have disappeared in the course of three months, if we make the period so long. So, in order to safeguard all those interests and to see that these people get regular attention, it is quite in order Mr. Chairman, that one month is good enough an interval. I beg to support the Motion. Thank you.

THE CHAIRMAN: Do we have to debate or we pronounce ourselves on it? Let me put the question. Motion by Hon. Leander Komakec, that Article 73, Clause (1), be amended by deleting the words appearing in the last line, 'three months' and inserting in their stead, 'thirty (30) days'. I put the question.

(Question put and agreed to)

THE CHAIRMAN: I do not seem to have any other Amendment on article 73, can I put the question on article 73? What is the problem, Chairman of Legal and Drafting Committee?

AN HON. DELEGATE: It is an amendment.

THE CHAIRMAN: According to the documents available to the Chairman, there is only one Amendment by Hon. Leander Komakec. Let us hear from the Chairman of Legal and Drafting.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. I have had no opportunity to receive the Amendments circulated by the Technical Committee. Nevertheless, I know for sure, that there are two Amendments which we approved on article 73 and there are quite a number later on, up to the end of the Chapter - I am sorry, I came in a bit late, I do not know whether any report has been circulated as to what we approved. Secondly, there are two amendments on article 73.

THE CHAIRMAN: No, your Deputy did report that some reports were coming and that there were about six Amendments to the end of the Chapter. That report has not arrived and so, it puts us in difficulty, but I guess if we say there are two Amendments and those who have sponsored them are here, we can take the Amendments.

PROF. KANYEIHAMBA: One of them, Hon. Mayanja Abu, is here and he is one of those who has put in an Amendment, Sir

THE CHAIRMAN: The difficulty of the Chair not having the Amendments, is the question of our Rules which direct us as to how to handle amendments if they are on the same Article unless we have them, we may find that we undo what we have done. But I can see three Members wishing to move Amendments, there is Hon. Mayombo. Fine, there are two other Amendments; one by Hon. Omara Atubo and the other one is by Hon. Abu Mayanja and they are both on separate clauses. So they create no problem and I call upon on Hon. Omara Atubo to move his Amendment which can be read out so that we all know what is happening.

MR. OMARA ATUBO (Otuke County): Mr. Chairman, my Amendment is on Article 73, Clause (2). The operative sentence as it exists now says, '*A person who is restricted or detained shall be afforded every possible facility*'. Mr. Chairman, I seek to delete the words, '*afforded every possible facility*' and substitute it with '*permitted*'.

THE CHAIRMAN: Is that seconded before you speak to it? Okay seconded by the honourable Member for Ayivu. Go ahead.

MR. OMARA ATUBO: Mr. Chairman, it is my strong conviction and belief that the words '*afforded every possible facility*' could be subject to abuse and to various interpretations. I believe that what is intended there, is that a person who is detained or restricted, should in fact, be permitted to consult a lawyer of his choice and should also be permitted to appear in person. So, by using the words, '*afforded every possible facility*', the executive or the person who is restricted, may say, the possibility is not there, the facility does not exist and therefore, the rights of that person will definitely be abused. So, Mr. Chairman, all I seek to do, is to ensure that a person who is restricted or detained is actually permitted to consult a lawyer of his choice and is to appear in

person or by lawyer of his choice at the hearing or review of his case. Thank you, Mr. Chairman. I beg to move.

THE CHAIRMAN: So, you are seeking to delete the words, '*afforded every possible facility*' and in their stead insert the word, '*permitted*'. Hon. Kabayo.

DR. KABAYO (Kassanda South): Thank you very much, Mr. Chairman. My clarification is to the mover of this proposed Amendment. I wonder if he would consider including both meanings. In other words to say, '*shall be permitted and afforded every possible facility*' because, I think that then the person concerned will be assisted. The present meaning includes permission to the person to consult a lawyer; whereas permitted is rather open ended. I wonder if the Mover would consider inclusion of both, '*permitted and afforded every possible facility*'. Thank you.

MR. OMARA ATUBO: Mr. Chairman, in fact, the Attorney General had asked me to use both words to afford every possible facility and permitted. So, I accept Mr. Chairman and I thank Hon. Kabayo for that. Thank you.

THE CHAIRMAN: Could you formulate it so that we move with you?

MR. OMARA ATUBO: So, the idea, Mr. Chairman, is that the restricted or detained person shall be afforded every possible facility. That appears to be a responsibility of the State in their interpretation, may be, but at the same time, the man also has his rights and if he requests, then he shall be permitted. This is the way I see it. So, at the end of the word facility, you can add the words 'and permitted'. (*Interjections*) The Lawyers are saying it should start with the word 'permitted' and then you continue with the other one.

MR. MALINGA: I think it will be neater to say that a person who is restricted or detained shall be permitted and afforded every possible facility to exercise the right he has been given - that is the permission to consult a lawyer of his own choice or to appear by an advocate. So, I would propose that the Amendment should be that after 'shall be' we add permitted and (*interruption*)

MR. MAYANJA ABU (Busujju County): Mr. Chairman, I am in support but I want to suggest a

further refinement in that it should be at his own expense. Mr. Chairman, if you say that the State is going to meet the cost of this, the State may say we cannot.

THE CHAIRMAN: But I do not think that this is saying that the State must pay for his lawyers but I think they were looking at a situation where they may have to put him in a vehicle and take him from one place to another and it would be a State vehicle. Do you want to charge him for the fuel?

MRS. KALEMA (Kiboga County East): Thank you Mr. Chairman. Regarding this Amendment (*Interjections*) I am speaking through a microphone but my voice is affected by a virus. (*Laughter*)

THE CHAIRMAN: Order! Order! It is not a laughing matter.

MRS. KALEMA: Mr. Chairman, I feel that I had accepted the word 'permitted' and I think this gives a better meaning for the purpose of this Clause: because, although I am not a master of English - afforded can mean two things. You can afford someone an opportunity and you can afford someone expenses. This is what I think. But if we need to say two words, let us say perhaps *permitted* and *accorded*.

THE CHAIRMAN: Yes, that is what the Amendment is now.

You see Hon. Omara Atubo moved that we delete all the words that appear there, "*afforded every possible facility*" and insert the word 'permitted' but was corrected along the way and the last formulation was by Hon. Malinga that it should read, *shall be permitted and afforded every possible facility*. So that what you are saying is exactly what it is on the Floor now.

MRS. KALEMA: Thank you. Then Mr. Chairman, put the question (*Applause*)

THE CHAIRMAN: It appears Ambassador Katenta Apuuli has something very new.

MR. KATENTAAPUULI (C.P. Delegate): Thank you Mr. Chairman for allowing me to seek Clarification and I am seeking Clarification from the Hon. Abu Mayanja. By using the word afforded, I want to be clear in my mind that in view of sub section (a) *to consult a lawyer of his choice...* if afforded

actually means that the state is committed to pay the expenses, I would like to seek Clarification that afforded is mandatory on the State. That is if you detain me, I can seek a lawyer from New York or Philadelphia and the State will pay?

THE CHAIRMAN: That will be straining the meaning but may be let us hear from Hon. Omara Atubo, Hon. Malinga or from the Member for Bussujju. Let us hear from Hon. Malinga.

MR. MALINGA: Thank you, Mr. Chairman. I do not think that we intend that the state should foot the bill, the actual professional fees but rather that the state should facilitate the detained person to have access to his Lawyer. Like to send a message for his Lawyer to come and meet him and when the Lawyer has come, to give them a room where they can hold a meaningful discussion to discuss how to present his case to the Commission. So, we are not saying that the state should foot the bill but it should afford him all possible opportunity to have access to his Lawyer. I think that is what the Hon. Member for Busujju had invited us to do and the formulation which I have proposed seeks to achieve just that. So, we are not making it mandatory for the State to foot the bill of your Boston based Lawyer or whatever but rather it will afford you an opportunity to pass on a message to him that you have a client here who wishes to consult you and he wants you to assist him in presentation of his case before the Human Rights Commission. That is as far as the cost to the State will go and when he arrives, he should be given every opportunity to see you and to have a discussion with you so that the Lawyer can take instructions from the person who is detained. Thank you.

THE CHAIRMAN: And it is a possible facility. The word is *possible* within the hands of the State to enable him see his Lawyer. It is not saying that the State shall pay, but if it pays, fine, great. If they say they do not have the money, then it does not fall within their 'possibility'. I think we should pronounce ourselves on this one. The question is as a Motion moved by Hon. Omara Atubo and modified along the way to read that - Clause (2) of article 73 should be amended in the first line by inserting the words 'permitted and' between 'be' and 'afforded'. In other words to read, *...shall be permitted and afforded every possible facility...*; then the rest remains as it is. I put the question.

(*Question put and agreed to*)

THE CHAIRMAN: There is another Amendment on Clause (3) by Hon. Abu Mayanja. You have the Floor.

MR. MAYANJA A. (Busujju County): Thank you very much, Mr. Chairman. Mr. Chairman, I beg to move that clause (3) of Article 73, be amended by removing the full stop and adding the words, '*and the recommendation of the Commission shall be binding*'. Can I move, Mr. Chairman?

THE CHAIRMAN: Is it seconded? Yes, it is seconded by Hon. Odur and many others. Yes, go ahead.

MR. MAYANJA: Mr. Chairman, I have had experience. In the past, there was provision for a tribunal which is now being substituted for by the Human Rights Commission. But under the existing Law and under the existing Commission, there is a provision for a tribunal chaired by a Judge of the High Court, appointed by the Chief Justice with other members which has the power to review the cases of persons detained. So, Mr. Chairman, my experience as a practitioner has been that, whatever recommendation the tribunal makes, of course they are confidential, the governments in the past did not seem to act upon such recommendations at all. And yet Mr. Chairman, the justification for not taking such a person to be tried in a public court of law is that, the evidence would, if it became public, affect the security of the state. But there is no such objection to the government bringing such evidence to a tribunal which sits normally, if it so wishes, in private. Consequently, if an independent Commission - The Uganda Human Rights Commission, has been given all the evidence which the government possesses but it decides to recommend that it is no longer reasonably justifiable to continue to defend such a person in the interests of the security of the state, then that recommendation should be binding and this Assembly should so provide.

Mr. Chairman, I am grateful, my Learned Friend has just shown and that, '*under the existing Law, the provision says that authority shall not be obliged to act in accordance with any such recommendations*.' Now, we want to reverse that position to say that 'In future, Uganda Human Rights Commission will be an independent Commission of eminent persons appointed as they will be provided for in the Constitution.' The government should be required to provide those people with the evidence that they have

and they have got good grounds why such a man is a security risk and why he should be removed from society. But if that Commission, withheld the evidence and says that the man should be released, then, the man must be released. Otherwise, the fears which have been expressed and echoed in many corners of this Assembly and outside, that people may be detained because they are politically undesirable or because they are political risks or because they are not liked by people; or because they have wrong types of hair-cut and all sorts of reasons like that, these fears would then be set at rest. There is no danger that this would affect the security of the state because, as I said, we can and we should trust the independent Uganda Human Rights Commission to be fully aware of the interests of State security and to be able to arbitrate between those interests and the interests of liberty and if they should pronounce themselves in favour of liberty, the man or woman should be set at liberty. Mr. Chairman, I beg to move.

THE CHAIRMAN: You have heard the Motion as moved. There is a Member seeking Clarification.

MR. KATUREEBE (Bunyaruguru County): Point of Clarification. I seek Clarification from the Mover. This Clause has two aspects. The Uganda Human Rights Commission may recommend the release of a person, in which case I can understand its decision binding but it may also uphold that this person continues to be detained. Now, in the event that the person is aggrieved by that decision of the Uganda Human Rights Commission, does this seek to prevent him from appealing to court? Are we trying to forestall the courts from hearing appeals arising from decisions of the Uganda Human Rights Commission? And I am seeking this Clarification in view also of what is contained in the next Article we are coming to article 75 (1), which says that, any person who claims that a fundamental right or freedom has been abused may appeal to a court of competent jurisdiction. Could I get Clarification from the Hon. Mover as to whether we are trying to say courts may Not enquire into decisions of the Uganda Human Rights Commission?

MR. MAYANJA A: Mr. Chairman, I think that the position being put by my Learned Friend, the Member for Bunyaruguru is misconceived. First of all, there is no prohibition on the government to release people detained under a state of emergency any time they wish. They do not have to do so on the

recommendation of a tribunal. The tribunal is protective, is a shield; it is not a sword. They can release anybody at any time, if they consider that he is no longer a security risk. So, I do not see how the recommendation works, if they say that we do not still think that he should be released, but if the government thinks that he should be released; or if it might even think so on political grounds there is nothing to prevent the government from releasing the person. Therefore without prejudicing, my Learned is an eminent Lawyer, he may have to suggest some refinements so that we can make this better. All that I am pleading for is that there should be an obligation on the government to release a person detained if the independent Uganda Human Rights Commission so recommends.

MR. LIIGA (Buvuma Islands): Thank you, Mr. Chairman. I would like to support the Proposed Amendment. Very often, as we have seen in the past, lots of monies is spent on these Commissions, and after they have done their work, they present their recommendations; and the government more often than not, sits on those recommendations. Now, in the case of a human being having been fully investigated by the Human Rights Commission and the recommendation is that, either the man be released or he faces the full force of the law, whichever way the Commission finds, it will not be in the interest of anybody, not even the state to refuse to adhere to the recommendations as given by the Commission. In any case, if we refuse the Commission to effect its decisions, we shall be weakening the body and in the public eye it will be as good as useless. I do not know whether Hon. Ssekandi is around. He is either Secretary or something to the Commission chaired by Justice Odoki but all their recommendations have never been effected, if any. It seems it was an exercise in fidelity in that respect. *-(Interjections)-*

Mr. Chairman, I am corrected that the report has not been published but my fears are that, even if it is published, it will be overtaken by events and nothing will be achieved from it. I, therefore, second this Proposed Amendment by Hon. Abu Bakar Mayanja, so that they will make it an obligation on government to make sure that they submit the recommendations of the Human Rights Commission. Thank you Mr. Chairman.

MR. ODUR (Dokolo County): Thank you Mr. Chairman. I am seeking Clarification with regard to this Amendment. Would it apply to all other recom-

mendations of the Commission? For example, if we could look at article 77 (d) - could that be applicable? - I want the Mover to clarify that to me, please.

THE CHAIRMAN: Okay, I think they will clarify as we along. Hon. Ndege, did you want to say something?

MR. NDEGE (Luuka County): In my opinion, I support the Amendment by Hon. Mayanja. Many times we set up Commissions or other bodies and they become ineffective and in this case, the Uganda Human Rights Commission would be ineffective if it is just going to write papers and their recommendations are just thrown in the dust bin. So, I think later on it is clear that even the Human Rights Commission is given some judicial powers as a court. This is specifically in connection with Section 73. I do not think that it affects article 77. So, after reviewing the cases, and they can say yes or no, I think that whatever they recommend is binding. And maybe just to improve on the sentence, I think we should say that instead of having the full stop we can say that 'The Commission may recommend the release of that person which shall be binding or uphold the grounds of his restriction or detention'. I think that will be a bit shorter and clearer. So, really, if we do not give them the independence and if we do not respect their decision, then we can as well do without the section. Everybody has his expectations, only to be ignored, then they appeal maybe to the IGG and another person. Let us be clear. Either, we say the recommendations are binding or they do not make any recommendations at all. That is my view.

MR. MUSUMBA (Buzaaya County): Thank you Mr. Chairman. The concern raised by the Hon. Member for Busujju, is to me a very fundamental concern. Fundamental, in the sense that it raises the major question of what powers should the Human Rights Commission have? Mr. Chairman, for your records and information, I too, am a Lawyer. So, I have been looking at this and I have noticed that: (1) Mention is made of the Human Rights Commission in article 73. But the Human Rights Commission as a Commission, is in fact, to be established in the subsequent Articles. Would it not be better, Mr. Chairman, if we considered the matter of the substantive powers and the effect of the findings of the Commission generally under Articles 76, so that it binds or it covers any findings that they make as a Commission, including that which is being raised in article 73.

Mr. Chairman, it is my belief that this makes the work tidy. Any reference to a decision by Human Rights Commission will have to be understood as such, as a whole, its effects and powers in the Laws of Uganda. Thank you very much.

MR. OLWA (Kole County): Thank you, Mr. Chairman. Mr. Chairman, I would like to support the Amendment as proposed by Hon. Member for Busujju. Here we are talking about the rights that a person has under a state of emergency. During emergency, government is so busy doing other things that they sometimes forget about the rights of the people they have closed up. So, the right people who might have the time - I think it is the Human Rights Commission. So, if they have reviewed the case and they have found that this case deserves taking action, I think the decision which they have taken should be implemented. Because at that point there will be no other person, no other body actually who will have the time to solve this problem. The view expressed that these proposals have come premature, in my view, may not be true because I think this provision is taken practically during the time of emergency and not during any other time. I, therefore, think that it is the right place and other Amendments should be included, Mr. Chairman. Thank you very much.

MR. MULENGA (Democratic Party Delegate): Thank you, Mr. Chairman. I also support the Proposed Amendment by Hon. Mayanja and I do not need to add to the reasons that have already been ably put by Hon. Delegates but I would like to answer two queries raised. One, is that, this should be transferred to the Articles dealing with the Uganda Human Rights Commission. I think that is not appropriate. This Proposed Amendment and what it is amending is dealing with section on human rights and freedoms during a state of emergency. This is a section about emergency and it is providing what the Human Rights Commission can do and should do during that period.

The other point that was raised by Hon. Katureebe which I initially sympathized with, I think can be answered in this form: That the Human Rights Commission reviews a case of an individual who is detained. If it decides or recommends that he should be released, then the Amendment is saying that that should be complied with. It will be binding on government or the detaining authority, if it should decide or recommend that he should continue to be detained. Hon. Katureebe was wondering whether that would deprive him of the right to go to Court -

I think it does not. There are two things: (1) The Commission will review again the following months and the months after. But the right of the individual to go to Court is not stopped, in my view. So, Mr. Chairman, I beg to support the Amendment.

MR. KAWERE (Mukono County North): Thank you Mr. Chairman. I beg to support the Amendment suggested by Hon. Abu Mayanja and my contribution is that, I wish to add to what he said. That the introduction of this Human Rights Commission is a step forward towards the assistance rendered to detainees. When we were with Hon. Abu Mayanja in Luzira in 1970, there was a mockery of court. Whereby a Judge of the High Court was ever imported to Luzira Upper Prison to review cases of people who had been there for three months. I say it as a mockery because so many times we appeared before this Judge and no recommendations were made. I remember my own detention was result of a senior court that was held by a judge of the High Court and I went in to defend Benedicto Kiwanuka. This was the cause for my detention. Also Ssendege was detained for a similar reason and we were kept in Upper Prison for eight months. So, when this Human Rights Commission starts reviewing cases, as I said, this is a step forward. I encourage it, I support it and it must be upheld. Thank you Mr. Chairman. I beg to move. *(Applause)*

MRS. OGWAL (Lira Municipality): Point of Clarification. Mr. Chairman, I am seeking Clarification from the Mover. Considering the fact that Article 72 allows the detained person or the restricted person the right to fair trial. Now, what would happen if the findings of the Human Rights Commission runs counter to that of the Court?

MR. MAYANJA: Mr. Chairman, I may not possess all the wisdom to meet every eventuality but you see that if Article 72 is applied, then the whole question that we have been discussing in all these Articles would not arise. We are now debating things because we think that will be a situation during emergency or when Uganda is at war when there are laws which allow people to be tried without going to courts.

THE CHAIRMAN: Not to be tried but to be held. Is it? To be held without going to court?

MR. MAYANJA: Yes, to be held. Because article 70 says that, *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. Now, this one may talk about a right to fair trial but the derogation is in article 70 and it will depend on the Act of Parliament. If the Act of Parliament is upheld and it allows, we are all legislating here or making a Constitution to provide for people who are detained without trial. So, there is no question of appealing from a decision of the Human Rights Commission to the High Court as I understand it but maybe my understanding is defective, Mr. Chairman.

THE CHAIRMAN: No, if I may, I think the point is article 72 is saying that, Parliament should not take a state of emergency as an excuse to remove the peoples' right to a fair trial. That is what it is saying. It is enumerating those rights and freedoms, which even if there is a state of emergency, Parliament has no right to remove, by passing laws which remove the right to a fair trial and to proper treatment befitting a human being. The other one is saying that in event that you have not been taken to court because of your detention during the State of Emergency, the following should apply to you. One of them is that, you should be visited regularly by the Human Rights Commission and review your case purely on the detention aspect. But should you be taken to court, then rules of fair trial should not be prejudiced merely because there is a state of emergency. That is how I read the two.

MR. SEKWEYAMA (Mawokota South): Thank you Mr. Chairman. I would also like to come in to support the Motion, first of all, on the grounds that Hon. Kawere has already given that we should not make this Commission a toothless bulldog. I remember the period Mr. Kawere referred to, I used to work with a judge who was given the responsibility to review cases of detainees and many times he would recommend their release and he was so disgusted that no single case that was recommended was reacted to positively by the government. Consequently, the judges ceased to accept to carry out that function to the extent that throughout the eighties (1980s) when resort to the same practice was revived by the powers, almost all High Court Judges declined to offer themselves to serve as reviewers of those cases. Because they knew that the exercise would not render any useful purpose.

So, Mr. Chairman, I think the provision that is being added to this Clause is very important so that when

actually the people appointed on Commission are appointed because of their integrity, we should then, take their recommendations seriously and they should be binding. Thank you Mr. Chairman.

THE CHAIRMAN: Do we think we can have anything new added to the discussions? I know what Clarification means, sometimes. Let us ask Professor to see what he thinks too.

PROF. NSIBAMBI (Presidential Nominee): Thank you Mr. Chairman. I would also like to support this Motion in the sense that one facilitator of democracy is really the creation of centres which enjoy some autonomy. Because then they act as checks and balances and I would add that, in view of this positive move, when we consider article 76, the mode of appointing this Commission will also be important. If you read Article 76, Clause 2, this Commission is appointed by the President with the approval of the National Council of State. Therefore, there is a problem there namely: that it might not have the necessary autonomy and when it lacks that autonomy and its decision is binding, then there might be a problem.

Therefore, a necessary condition of buttressing the positive move, is to ensure that when this Commission is appointed it requires the endorsement of the National Legislature; so that we have a two-pronged approach and we assist this positive move. I support it.

THE CHAIRMAN: Hon. Nabudere, did you want to have something clarified?

PROF. NABUDERE: No, I was also raising matters to be clarified further because in view of yesterday's debate and in view of Article 72 and the rather hazy way in which hon. Abu Mayanja handled the issue which Cecilia Ogwal raised, the issue of the effect of the power of the ordinary courts provided for in article 72. There is a further problem posed by the Article we passed already last week. That is in Article 53, Clause (7), which gives the right of *habeas corpus* to any person. The exception which was provided of it being removed during the state of emergency was in fact voted out by this Assembly. So, we now have actually three situations in which a person can be released or ordered to be released i.e. by government itself on its own Act, if they consider the person no longer a threat to Law and Order.

Secondly, the situation where the Human Rights Court orders such a person to be released, I welcome Hon. Abu. Mayanja's Amendment to that effect, that such order should be binding. But now we have the situation where the person can be brought before the High Court on a writ of *Habeas Corpus* and what is the effect of that person being brought before the court? Because when a person is brought before the court under a writ of *Habeas Corpus*, it is normally on the basis that the person holding that person will be required to show cause, why that person should not be released. Now, in the course of that person being brought before the courts under this writ of *Habeas Corpus*, there could arise a situation where the court orders that the person held, in their view, according to the only rules or according to the Act of Parliament which is there, which may be passed in this respect, does not qualify this person to be held in detention. What would be the effect of such a ruling? In fact, we are not quite clear whether the right to fair trial is in fact, guaranteed.

We have actually a situation which we have created for ourselves in passing contradictory Articles and I think we may have to review this situation at a later stage. There is a contradiction between Article 71 and Article 72 and the earlier Article of *Habeas Corpus* which we passed last week.

MR. AWORI (Samia Bugwe North): Point of Clarification. I was just seeking clarification especially this will be directed to Legal and Drafting Committee. We have talked about the state of emergency detention and what you cannot do under a state of emergency for human rights purposes. But Mr. Chairman, what is the concise description of 'state of emergency?' This could be security; this could be natural disaster; it could be a military operation. I have noted on a number of occasions where you could use military operation procedures, so actually amounting to a state of emergency. I was seeking clarification particularly on article 70, article 71 and what we are discussing at the moment. Could we have a concise description of a state of emergency so that we know what to minus and what to add?

THE CHAIRMAN: We shall come to that.

MR. AWORI: But we are describing it even before we have come to it.

THE CHAIRMAN: No, we are not describing it here.

MR. AWORI: What we can do and what we cannot do.

THE CHAIRMAN: What this one is saying is that there is in article 129 room for declaration of a state of emergency in certain circumstances. Now, this one is dealing with human rights and saying, should you, by virtue of a declaration of a state of emergency find yourself in custody, then the following procedures shall apply in relation to you. Because the effect of a state of emergency, one of them would be to suspend these other rights which we have been providing in Chapter 5 and in case they are suspended or you find yourself in custody then the following should be the procedure that should apply to you. But should they take you to court, you should be afforded a fair trial. Parliament should not interfere with it because of the existence of a state of emergency when you are taken to court, be it arising from your conduct or any other situation.

MR. AWORI: So, that leaves the door open for revisiting this particular *-(Interruption)*

THE CHAIRMAN: If for instance we come to article 129 and reject it, then of course, this falls by the wayside. So, there is still room for redrafting the whole thing. If we come to the state of emergency provisions in article 129 and say no, there shall be none, then of course, - or if we amend it drastically so as to affect these other provisions - then that becomes a drafting matter.

MR. ODOY ASOKA (West Budama North): Thank you Mr. Chairman. I would like to support the Amendment by Hon. Mayanja Abu and I would like to request for his indulgence and add one or two words to his Amendment if he would consider it. I would like to take up from where he amended to say: *'...and the recommendation of the Commission shall be binding'* and my addition is: *'...and actionable by Court in redressing contrary action or inaction by relevant authority.'* I am looking at a situation where the Commission may make a recommendation and the relevant authority may not wish to take any action in agreement with the recommendation and I am seeking the possibility whether we could not put here a proviso so that it can help the situation. The relevant authority could be taken to court in order to comply with the Commission's recommendation. Thank you Mr. Chairman.

THE CHAIRMAN: But I thought that once we grant that right, and make it binding, that alone is

sufficient. It can be picked up in other situations so that you can go to court to enforce it. It becomes enforceable. We do not have to say that, unless other Members have got a different view.

LT. COL. KIIZA BESIGYE (NRA Delegate): Thank you, Mr. Chairman. I am also first of all, adding my voice to those who are expressing concern about the inconsistency. What I seem to pick from article 72 is that even under a state of emergency, the liberty of an individual is only regulated by what we passed in article 53 - I think, that there will be no alteration in the liberty of an individual even in a state of emergency in as far as getting fair trial is concerned. Which means that even in a state of emergency, a person must be in court within 48 hours. If he is not released within 360 days, he must order his release and so on and so forth, which therefore, makes it difficult to see in which circumstance article 73 will be applying. But I think, maybe the Legal and Drafting Committee and the Technical Committee will advise on that.

If there is need for detention outside the provisions of the ordinary rights we provided in a state of emergency, then Mr. Chairman, I would support article 73 with the Amendment of Hon. Abu. But maybe, instead of saying that, the Human Rights Commission may recommend and the recommendation will be binding or whatever, to give the Human Rights Commission express authority to order release so that it says: '*On a review of the case, the Human Rights Commission may order the release of that person or uphold the grounds of his restriction*'. So, that once they order the release, it is like court because we are giving it powers of the court actually to review the case; to listen to evidence from the government and from the detained person; and take a decision. And I think once that decision is taken, I would rather we give them express authority to order release rather than recommend and have the recommendations binding. I thank you Mr. Chairman.

MR. MAYANJA A: Mr. Chairman, I would gratefully accept that Amendment. *(Applause)*

THE CHAIRMAN: Could it be properly formulated so that we now pronounce ourselves on that formulation? Could Hon. Doctor Kiiza Besigye repeat his formulation?

MR. MAYANJA: Mr. Chairman, it is really the substitution of the word order so that it reads 'on

review of the case, the Uganda Human Rights Commission may order the release of that person or uphold the ground of his restriction or detention'.

THE CHAIRMAN: Now, can I propose that we put the question. You have heard the formulation. I now put the question.

(Question put and agreed to)

THE CHAIRMAN: Now, let us pronounce ourselves on article 73. The question is that Article 73, as amended, do stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Now, Hon. Delegates, a number of papers have been coming in. I do not see any Amendment to article 74. Is there any? I will put the question - Hon. Zziwa George.

MR. ZZIWA G. (Kawempe Division North): Thank you, Mr. Chairman. I just wanted to move a small Amendment from the Floor on article 74 (a).

THE CHAIRMAN: Then we have a problem, but let us hear you.

MR. ZZIWA: It is a small one. article 74 (a) says that, '*The number of persons restricted or detained...*' - it says, '*shall make a report to Parliament in respect of - to give 'the number of detainees*'. And Mr. Chairman, as you probably know, what is important to a detainee is the state of his health and Mr. Chairman, I would like to move a small Amendment by saying that: '*A report as to the state of the health of the detainees should also be given, certified by an independent doctor*' I would beg to move Mr. Chairman.

THE CHAIRMAN: Do you think that should come from the Minister or it should come from the Human Rights Commission? Which one would be better on that one? You see, the Minister can come and give statistics but *(Interruption)* - Hon. Omara Atubo, did you - *(Interruption)*

MR. OMARA ATUBO: Mr. Chairman, actually Hon. Zziwa is very correct and Mr. Chairman what you have said is really what I was going to say. That if you get a shrewd Minister and a tricky one, he will come to the Parliament and say Article 74 says I

should give a report in respect of the number of persons. So, the Minister goes and says there are 30 people detained but I thought Parliament should be more interested in statistics rather than really the persons. Unless something there talks about just to know the number but also the details of these people, the names and even their state or conditions. I would be happier with that sort of Amendment, Mr. Chairman. Thank you.

MR. KAGGWA (Kawempe Division South): Thank you Mr. Chairman. I would like to say that what my Colleague, Hon. Zziwa is trying to move - I do not know whether he would reconsider if he looked at Article (77) Clause (1)b. And secondly, I think the Minister will be part of the Commission, but let him look at that Article and see if he reconsiders his Motion. Thank you.

THE CHAIRMAN: Of course, if you look at article 77(1) and then at article 77(2) - If at that stage we could say that in their report they should include some of these things, I think it is a question of refining the work of the Human Rights Commission than really imposing it on the Minister. Don't you think so? Hon. Zziwa.

MR. ZZIWA: Mr. Chairman, this is actually spelling out the work of the Commission on these - but it does not impose the responsibility of the Minister to state to the House, the state of health of the detainees. Mr. Chairman, as you probably recall, we have seen quite a number of cases whereby detainees are released at the very last minute when in fact they are about to enter their graves, without really having had the opportunity for somebody to raise a finger on their behalf to say that health-wise they are not fit for detention.

THE CHAIRMAN: What I was looking at was that we have just said that after every 30 days, the Human Rights Commission will visit the detainees and then make recommendations as a result of an inquiry there. Now, we have said they can in fact make an order. I was going to say that, do you think it is better the Minister comes to report on that or you make it the Human Rights Commission? Yes, Hon. Kaggwa.

MR. KAGGWA: Thank you Mr. Chairman. If my Colleague dares to, he should look at article 77 clause (2) - I think that will cover. I will read it: *The Uganda Human Rights Commission shall publish*

periodical reports on its findings and submit annual reports to Parliament on the State of Human Rights and Freedoms in the country I think that would be covered in that.

THE CHAIRMAN: But I think his concern is that annual is too far away from - so, I think when we come to that, one can narrow it down, unless you want to do it in another way. But I would have preferred, because you see you have independent doctors and all that when in fact, the Human Rights commission. Let us hear Hon. Ringwegi.

MR. RINGWEGI (Padyere County): Thank you Mr. Chairman. I think the Amendment that Hon. George Zziwa is seeking to bring in would be most aptly covered by the Human Rights Commission as you have observed. Further to that, Mr. Chairman, I would invite Hon. George Zziwa to revisit the provisions of article 71(b) which guarantees the freedom of the detained to be accessed by his spouse or immediate relatives so that in case the detainee is in bad health, medicaments can be provided. Mr. Chairman, I am trying to invite the Hon. Member to this provision because I would not like to see a situation whereby a Minister in government is turned into a medical practitioner and burdened with the duty to specify whether every detainee has a particular kind of ailment and I think really it should not be the work of Parliament to go into the details of knowing whether the detainee has asthma, or whether the detainee has a 'virus'. All these may not even help because mere information that we have 50 detainees, all of whom are suffering from AIDS or this kind of thing, may not even interest Parliament very much because Parliament will do nothing as the ailment is already there. But rather Parliament should be interested in knowing that at a particular time there are about 50 detainees and possibly the location where they are. That is something that should interest Parliament but not the kind of ailment. And since we have provided that a person detained can have access to a Medical Doctor or a member of his family, then if there is any serious ailment these can be taken care of by those provisions which allow access. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Zziwa there is this other side of the coin. You are looking at a situation where someone has been bashed or has developed a sickness because of his confinement but also there is the other side where people have their own sicknesses and they do not want the general public to know.

Should we have the Minister reading out private medical records of detainees in Parliament? I do not whether that is correct. Hon. Odong.

LT. COL. ODONG (NRA Delegate): Thank you Mr. Chairman. I would like to submit that when a declaration is made that there is a state of emergency, that is a political declaration and someone in political authority must assume the responsibility for that decision and be able to explain to the people of Uganda the state of affairs. Therefore, I am in full agreement that the Minister who is responsible for either detaining or restraining people at any one particular time, should be able to answer certain specific questions as to:

- (a) How many people are detained?
- (b) Where they are detained?
- (c) Under what conditions are they staying?
- (d) What is their state of health and so on?

Therefore, as opposed to the Amendment that is on the Floor, I would propose Mr. Chairman, we strike out from sub Clause (a) the words 'number of' so that the Clause reads: *'In every month in which there is a sitting of Parliament, the Minister responsible shall make a report to Parliament in respect of the persons restricted or detained under the State of Emergency'*, which I believe leaves a wide scope for Parliament to quiz the Minister in charge, to tell them as much as possible because it is his responsibility. He has got officers to look after the state of health of these people. The state of their feeding and the manner in which they are being kept. So, I pray that we strike out just the words *number of* from the sub Clause. Thank you Mr. Chairman.

MAJ. TUMUKUNDE (Rubabo County): Mr. Chairman, in this situation, you imagine a government under a state of emergency and in those circumstances, of course, there is a lot of pressure on the government. This Minister comes in to defend a government in Parliament in most of the cases. Now, if we -

MRS. V. SSEKITOLEKO: Thank you Mr. Chairman. May I request the Hon. Tumukunde who has just presented his support to clarify to me as to how we shall quiz the Human Rights Commission. Because it is one thing setting up a good Commission but it is quite another getting it to work. If a Minister is the one in charge, he will come to Parliament and as someone else has already said, you can risk all the questions. But how accessible and how public is the worth of the Human Rights Commission? It sits

when it wishes and where it wishes. But for me as a Minister I have no choice once it is a requirement, I am there and I have to answer all these questions. So, can I be clarified, how he expects people who represent the people access to this information.

THE CHAIRMAN: I thought we were saying that the Human Rights Commission, and we have said so already, shall visit these detainees monthly. All that we do is among the things that we impose on them. We can impose the requirement that they must report to Parliament on a state of health of the detainees. But what we have not highlighted is whether you are not invading the privacy of some of the detainees if their medical status is to be read out in public.

DR. NAKYANZI (Ntenjeru South): In view of what is taking place, I am in full support of the Minister in charge, giving an account to the people's representatives that is the Parliament. However, I feel that, giving just numbers is not enough and I was suggesting, instead of saying numbers alone, we add on to say, *'the number, identity and health of person restricted'*. Because health does not mean just diseases alone. It will be a general over view of how those people are being kept and giving the suggestion that the Human Rights Commission accounts to the public or to the Parliament, I feel it is wrong because it is a government which is retaining those people. Somebody should be able to speak on behalf of government so that he is quizzed to explain the details, why they are retaining so and so and why is he in such a situation? Because the Human Rights Commission will be just reporting on what it has observed. It does not have the ability and the power and the authority to implement what it should do. It will be able to note that, such a thing is taking place. But you cannot for example expect that Commission to explain why for example, prisoners are kept in wrong places. Whereas this Minister, she would be able to explain why prisoners are given one meal, why detainees are not given such and such.

So, fellow Delegates and Chairman, I would like to suggest that, (a) be amended to add the word *'identity and health of persons'* in addition to *number*. Instead of deleting the whole thing. Thank you.

DR. MUGYENYI (Isingiro North): Thank you, Mr. Chairman. Mr. Chairman, I am in full support of Hon. Amaza's amendment. *-(interruption)-* Mr. Chairman.

THE CHAIRMAN: We have not taken any amendment yet. Now there is one of Hon. Amaza; there is one of Dr. Nakyenzi; and even the one of Hon. Zziwa has not yet been framed into a question on the Floor. I was trying to find out whether we should move in that direction. It would appear to discipline our debate. We may have to have a proper amendment moved.

DR. MUGYENYI: Mr. Chairman, if I could be allowed to give my opinion, I feel that Parliament cannot question the Human Rights Commission for having done this or for having not done that. I feel the Minister should be able to answer on behalf of government why the prisoners are in such and such a state. So, Mr. Chairman, I feel the Minister's report will be compared to the periodical reports of the Human Rights Commission. So, I feel the Minister responsible, should be able to give the status and conditions and the number of the prisoners in all our prisons. So, I feel, if we just remove the number and leave the persons restricted, the Parliament of the day, will make the necessary details about those persons who are detained.

So, Mr. Chairman, I feel we should give that responsibility to the Minister, to tell Parliament what is happening in the prisons and they will compare that report with the report of the Human Rights Commission which is mentioned in article 77 Clause (2). Thank you, Mr. Chairman.

THE CHAIRMAN: I think, let us get a Motion moved first - we have actually debated it in advance - and then we proceed from there. What information do you want to be inserted Hon. Zziwa George.

MR. ZZIWA: Thank you, very much, Mr. Chairman. I would like to move that article 74 (1)(a), be amended to read as, 'The persons restricted or detained under the state of emergency - sorry. ... that the Minister should give a report as to the state of health of the persons restricted'.

THE CHAIRMAN: No, I can help.

MR. ZZIWA: Okay.

THE CHAIRMAN: So that 'In every month in which there is a sitting of Parliament, the Minister responsible shall make a report to Parliament in respect of-

(a) the number of persons restricted or retained

under the state of emergency including their state of health'.

MR. ZZIWA: And, may be, Mr. Chairman, we add in 'the location', that is also important.

THE CHAIRMAN: You see, number (2) is the publication in the gazette; Number (1) is the one where he goes to Parliament and can be quizzed. I thought the main argument was that, the minister should go to Parliament and give detail, so that he can be questioned by Parliament. Two, is publication in gazette for general knowledge. So, that the area in number 1(a) is looking at the figure plus the state of health. Hon. Dr. Nyeko, did you want to say something?

DR. NYEKO: (Presidential Nominee): Thank you, Mr. Chairman. I am putting my hand to oppose the Motion moved by Hon. Zziwa.

THE CHAIRMAN: No, we have not yet agreed on the wording first. Let us first agree on the wording.

MR. MAYANJA ABU: Mr. Chairman, listening to my Hon. Colleagues it seems that the main concern why they want to put the responsibility on the Minister is that he can be questioned. But Mr. Chairman, there is a right in Members of Parliament to put questions to Ministers on any matter under the administration of the Government at any time. We do not need to wait for the report. Representatives of the Constituencies where the detainees come from would have, I would imagine, an interest at any time to question the Government about the state of health.

Now, in view of the reservation with great respect which you, Mr. Chairman, brought to the attention of the House, I think it would be for if you do not provide for this report on the state of health because we have allowed the family to visit this man. When they go there they can come and if nothing is taken they can complain to their MP. So, I think that the amendment seems to be superfluous.

MR. ATWOKI AMBROSE: Thank you very much, Mr. Chairman. In view of the fact that I have heard several contributions on the Floor, I would like to suggest this formulation. It should read that 'In every month in which there is a sitting of Parliament, the Minister responsible shall make a report to Parliament in respect of- (a) the number, identity, location and the state of health of persons

restricted or detained under the state of emergency. Thank you.

THE CHAIRMAN: If Hon. Zziwa buys that, then we can dispose off it quickly.

DR. NYEKO: Thank you, Mr. Chairman. As I indicated earlier I was determined to oppose this Motion in whatever form it is presented. I think what we are trying to amend is already covered under article 77(b). If the Minister is expected to make reports to Parliament in respect to the names of persons restricted and detained, (b) is giving us that he is also going to give report on, *'the action taken in compliance with the recommendations of the Human Rights Commission'*. And to my knowledge, the Human Rights Commission during their monthly interaction with the detained person, they will be considering the conditions of the detainees; the congestion may be in the place; the kind of food they are eating; their condition of health. And all these they put in their recommendation, pass it to the Minister then the Minister will under this article 74 (b), also include it in his report in Parliament. So, we do not have to come out and indicate health separately. Thank you, Mr. Chairman. I oppose the Motion.

MR. KYEMBA: Thank you, Mr. Chairman. I have been trying very hard to understand the Mover's intentions whether the Amendment would make the situation any better. I say, Mr. Chairman, that the Provisions may in article 77 (1)a and b, make sufficient provision for information to be availed to Parliament. And as has been pointed out, when you go to article 77(2), the Minister is required to publish even more details giving the addresses, the names, he can even say the peculiarities if he wishes, of the detainee.

I really say, Mr. Chairman, we are taking time on an issue which is very well catered for under 77 (1) and 77 (2). Thank you very much Mr. Chairman.

MAJ. GEN. TINYEFUZA: Thank you, Mr. Chairman. Mr. Chairman, I have been trying also to find out in whose interest this proposed Amendment would operate. Because I find it rather redundant in a sense that under the Law we have already provided access of the family, next of kin, the spouse to the prisoner or somebody detained. Under the same Law, there is entitlement to medical attention and so on. Now, I do not know how useful it is to that

detained individual to come to Parliament and start divulging information about one's health when his family is already aware, that he is entitled to medical treatment. So, actually, if anything, you will be infringing on his right to privacy. So, I do not know in whose interest exposing the state of his health to Parliament would be? It is my conviction that actually it will be against the interests of the detained persons, because once a person is already having medical attention and his family has access to him, I do not think that it should be a matter of public concern to know about his health. I think it should be the concern of Parliament to know the number of people; not how they are. That should be left to the Human Rights Commission because it can even choose to keep this information secret and only demand that, that situation is redressed. So, I find it rather superfluous in that it does not add anything new. It fringes on the rights of the individual to privacy and it does not in any way, help you because it is already provided for under the already passed articles, Mr. Chairman. Therefore I oppose the Amendment, Mr. Chairman.

DR. MIYINGO KEZIMBIRA: Thank you very much, Mr. Chairman. Mr. Chairman, I support the Amendment as moved by Hon. Atwoki. Mr. Chairman, it is important that the Minister concerned should be able to give a precise and detailed report of people detained, at any one time, in Parliament. We are imagining that all cases will be old cases which will have been gazetted. There is a possibility that when Parliament sits, there may be new cases of people detained and their cases may not be familiar with anybody; they have not been gazetted. The notification of the next of kin, the way we put in an Amendment earlier on, may not have got the information. So, if the information is revealed in Parliament and even the condition of the detainee, then the Area Parliamentarian of the detainee will take responsibility. First of all, he may personally visit his own subject and eventually transmit information to the next of kin.

So, I think this is very important, Mr. Chairman, that we should support an Amendment which is for the good of the people. This is the use of Parliament and Ministries. So, Mr. Chairman, I wish to support this Amendment be supported by everybody. Let us pass it for the interest of the people for whom we are making this Constitution. Thank you very much, Mr. Chairman.

MR. WILLIAM WANENDEYA: Thank you very much, Mr. Chairman. Mr. Chairman, our history has shown that for the last 32 or so years, the biggest enemy of Ugandans are we, Ugandans ourselves. We imprison each other; we kill each other and we say we are Christians or religious people but at the same time we do each other things which are inhuman, Mr. Chairman. Therefore, we recommend and support that while we are making this Constitution, we should try as much as possible to divide roles whereby we would have checks and balances. Mr. Chairman, it is in this connection that I would like to support the Motion on the Floor by just making sure that there are checks and balances and this respect therefore, in the second line, starting with shall, Mr. Chairman, says, *shall submit*. That is *'The Minister responsible shall submit to Parliament the Human Rights Commission Report in respect of-'* and then you go under (a) *'the number of...'*, then we insert details including the health of persons detained, Mr. Chairman. This would be a better compromise between the Minister making a Report because he may be singing glories of Government when it might be the Minister himself who has detained that person and he would want him to die in prison. I therefore, would submit that we better put in place the Amendment so as take care of the people who may be detained. I thank you, Mr. Chairman.

MR. MALINGA: Thank you, Mr. Chairman. Mr. Chairman, I sympathise with the Amendment. But as far as it goes, I am unable to support it because if we are talking of a state of emergency, if it is really a true state of emergency, then the possibility of Parliament being in session is quite remote. It would probably be called only once to impose a state of emergency, to pass that resolution authorizing the state of emergency and thereafter it will be called in again only to extend that state of emergency. So, Honourable Colleagues I would say that if the Minister is to make this report, this report should be led every calendar month whether Parliament is sitting or not. A Report is made to Parliament in more than one way neither by just laying the papers on the Table when the Parliament is sitting or by submitting it to the Clerk to the National Assembly. What I really would like to see is that the Minister transmits a Report to Parliament whether Parliament is sitting or not because that information may in fact, force the Members to ask the Clerk or whoever is responsible to summon Parliament to discuss the matter. So, I would really want to see that the Minister is required to submit all the information

to Parliament every calendar month and what should be compiled in that Report.

If we look at Clause (2), it already says all the things we are asking for, that in the gazette - the gazette will have the number and the names and the addresses of the people. Why is this not required in the Report to Parliament? If this information is anyway going to appear in the gazette, why should it not be made available to Parliament? I think we should put all these facts in the Report the Minister is required to make.

THE CHAIRMAN: You support, but you do not quite support.

MR. MALINGA: Well, I would rather the Minister makes the Report every month. Thank you.

MR. MBURA-MUHINDO: Thank you very much, Mr. Chairman. Mr. Chairman, I will begin by saying that the issue we are discussing is very important and that many of us can be saved if it is supported. And that Mr. Chairman, we are discussing this in an atmosphere where we have a Government that is democratic. Time may come when some of these things we are looking at may not work out and if we have had some checks and balances, Mr. Chairman, we shall save ourselves and those to come next after us.

I want to react to the suggestion or the information which was given by the Attorney General, that in Parliament we have question time. That is very, very true.

THE CHAIRMAN: The information was given by the Member for Busujju not by the Attorney General.

MR. MBURA-MUHINDO: But it is not so easy that whenever you put a question, and that question is going to be answered, we are at the mercy of the Clerk to the National Assembly to consider whether your question will be brought to Parliament or not. So, that one cannot be a guarantee. So, Mr. Chairman, I would support that the Minister responsible gives a Report and more so, the health of the individual is most important. What is more important about the individual than his own health? Why do you come to report to us other things and then you leave the health of the individual? We have a history where you have had people rotting in cells. So, Mr.

Chairman, having looked at the history of this country, I highly support the Amendment which is on the Floor. I thank you Mr. Chairman.

MR. ODOY-ASOKA: Thank you very much, Mr. Chairman. I support the Amendment as proposed by Hon. Atwoki for three reasons. One is that the Constitution we are trying to make is to instill transparency in the people who will be responsible for the management of public affairs in this country.

Secondly, One of the previous Speakers opposed the Motion on the ground that in whose interest would the help of the detained person be divulged in Parliament? But I would like to say that in fact to the contrary, information on the health of a detained person is very important to be known by Parliament so as to enable the representative of that detained person to take it up immediately with the relevant authorities. Further more it will also help the general public to know the kind of treatment that the detained persons are being subjected to in the prisons. And finally, this information on the details of the detained people by the Minister, the names: the state of their health, where they are detained and so on, reinforces information flow about the state of health of the detained. Therefore, it is important that the public is entitled to know the number of the people detained; their health; their conditions; and where they are detained and also help the Government if these people are well catered for.

But if the conditions under which these people are being held are not in the best interest of anybody, then of course the public are entitled to form their own opinion as to how they feel the Government at the time is treating the people. Therefore, it is in the interest of all of us not necessarily now, but in future it could happen that your brother, sister, daughter, yourself or whoever may find oneself in the situation like this and you would wish you had made a Law that to save your own interest and the interest of your relatives and the new generation to come. I thank you very much Mr. Chairman.

MR. LUBULWA MIGADDE: Thank you, Mr. Chairman. Mr. Chairman, I am wondering whether we are not really wasting time on this Amendment, because when we look at Article 77, when you look at the functions of Uganda Human Rights Commission, one of the functions under article 77.(1)b is that the Commission has *'to visit jails, prisons, and places of detention or related facilities with a view to assess and inspect conditions of the inmates and*

make recommendations'. That is one of the functions. Now, when you go to article 74, where we want to move the Amendment, you realise that the Minister responsible shall publish every month in the gazette and in the media, the number and the names and the address of the persons restricted or detained; and (b) the number of cases reviewed by the Uganda Human Rights Commission. Now, if the Minister is going to report in the gazette the recommendation of the Commission, definitely what we want to cover in the Amendment will be in the Report.

I personally believe that Mr. Chairman, we are only wasting time on this Amendment. I therefore, do not want to support it. I suggest that Mr. Chairman, you put the Question. Thank you.

MRS. CECILIA OGWAL: Thank you very much, Mr. Chairman. Mr. Chairman, I think this very serious Motion may be derailed because sometimes we do not read backwards and forward in order to put our case. Mr. Chairman, we have learnt from the past, that is why we have decided to adopt a Human Rights approach on this Constitutional making. When a person is detained the most important thing, Mr. Chairman, is to know where that person is detained and in what condition that person is. We feel that that matter must be reflected in this document, Mr. Chairman.

Secondly, we would like somebody who can report directly to the people; to be the one to table that report to us. Mr. Chairman, the Human Rights Commission we are talking about may be very well empowered; may be composed of people of very high calibre, but you must realise that they are handicapped. They may have a very good report but to what effect? We would like the Minister himself to table that Report to Parliament so that he can be put to task should anything happen. The Report may be there that people have been detained but at the end of the day you find that the person has not been traced. So, Mr. Chairman, we want to have this in record. We must reflect in this Document what we have learnt from the past and this thing must now be clearly debated by representatives of the people. Thank you, Mr. Chairman.

LT. COL. SSERWANGA-LWANGA: I thank you Mr. Chairman. Mr. Chairman, I oppose the Amendment on the ground that disclosing people's health conditions is even unethical. We are asking too much. Is this Minister the one going to inspect these people? The Report will be enough. I would

give an example, Mr. Chairman, on the issue I am trying to say. Suppose all of us here are rounded up, under emergency and then the Minister comes with a list that these are the ones who are in good conditions, these are the ones who are sick. Now, Parliament will ask, 'What are they suffering from?' So and so is suffering from gonorrhoea; so and so is suffering from T.B.; AIDS etc. That is too much. It even infringes on people's privacy. So, I think we should leave this out and allow the Minister to make the Report. So, the relatives of the people who have been imprisoned will go to visit them and then get what that man or woman is suffering from but not to come and advertise in the gazette or media. Mr. Chairman, I oppose the Amendment. Thank you.

MR. ATWOKI: Mr. Chairman, the Amendment reads as follows: *'In every month in which there is a sitting of Parliament, the Minister responsible shall make a Report to Parliament in respect of (a) the number, identity, location and state of health of persons restricted or detained under the state of emergency'*. Thank you.

(Question put and agreed to)

MR. WANENDEYA: Point of Clarification. Thank you Mr. Chairman. Mr. Chairman, I do not know whether before we completely pronounce ourselves on article 74, I had wanted to get the matter as it were. The Amendment put it is that it is the Minister who will be responsible for submitting to Parliament the Report, but that Report should be from the Uganda Human Rights Commission in respect of the points which were enumerated, Mr. Chairman.

THE CHAIRMAN: Hon. Wanendeya, you should have done that when I gave you the Floor. You should have moved an Amendment; it is now too late. We have decided on the wording as it is. What I would like to suggest to the honourable House that in view of the Amendment we made in article 73 to say that the Human Rights Commission can order the release on review, then we should change the wording in article 74(1)b and (2)c by removing the words 'recommendations' and insert in the words 'findings' to be consistent. If that one is agreed I will ask someone to move it.

MR. ABU MAYANJA: Mr. Chairman, I beg to move formerly that in view of the Amendment of the wording of article 73 whereby the Commission has now power to order the release and not merely to

make a recommendation, Article 74 (1)b should be amended by substituting for the words the 'recommendations' with the words 'findings' so that it reads, *'In every month in which there is a sitting of Parliament, the Minister responsible shall make a Report to Parliament in respect of- (b) the action taken in compliance with the findings of the Uganda Human Rights Commission'*

THE CHAIRMAN: I put the question as read above.

(Question put and agreed to)

THE CHAIRMAN: I now put the Question that Article 74 as amended do stand part of the Draft Constitution.

(Question put and agreed to)

MAJ. GEN. TINYEFUZA: Thank you, Mr. Chairman. I am sorry Mr. Chairman, to put you a bit back to article 74. It is just for clarity. We have empowered the Commission to order the Release of people. This is practically an active role. Now, I do not know how we can replace 'recommendations' with 'findings' because it will have decided. So, I do not know whether the two are really consistent. Because once you can actively order the release of a person, then that is not the finding. It is a decision taken. So, even grammatically I do not know whether it is correct to call it a finding when you have already taken decision on something?

THE CHAIRMAN: I thought the Commission would go into a jail or a detention place and review a case of a particular detainee and if in its finding the detainee should be released, they make an order to that effect.

MAJ. GEN. TINYEFUZA: Yes, Mr. Chairman. So, that becomes already a decision not a finding.

THE CHAIRMAN: You find that the person is not guilty and then you order his release. That is how it is.

MAJ. GEN. TINYEFUZA: Okay, Mr. Chairman. Thank you.

MR. CHARLES OWOR: Mr. Chairman, I am the only Member of the Legal and Drafting Committee who is still around. But I would like to say that

there was no Amendment to our knowledge. So, we can go ahead with it.

THE CHAIRMAN: I now put the Question that Article 75 do stand part of the Draft Constitution.

(Question put and agreed to)

MR. CHARLES OWOR: Mr. Chairman, in Article 76, the Committee did consider the Amendment which was being moved the Hon. Margaret Zziwa and Hon. Byanyima. But the Committee was of the opinion that even though that Amendment would appear to be very important and necessary, they thought it should not come to that particular Article. And they therefore, decided that they will report this to the House and this Amendment will be moved at a later stage. This has to do with gender sensitivity with regard to the appointment to constitutional bodies and we thought that we should inform the House that this Amendment has been deferred and it will be brought up later so that a provision will be put in the constitution where whenever appointments are being made in our constitutional organs, gender sensitivity will be a priority. And this was just a report that we thought to bring. Thank you.

THE CHAIRMAN: But there is, nevertheless, a proposed Amendment to article 76(2) by a consortium of Members headed by Hon. Dick Odur and consisting of Hon. Dr. Mugenyi, Hon. D.M. Ochyengh, Hon. Liiga, Hon. Jacob Aniku, Hon. Dr. Kezimbira Miyingo and Hon. Masiko Winifred.

MR. DICK ODUR: Thank you very much, Mr. Chairman. Our Amendment is a simple one. We propose that Article 76, Clause (2) should have the words, *'the national council of state'* deleted and instead we insert *'Parliament'*. I beg to move.

MR. SEBI: Order! Thank you, Mr. Chairman. Mr. Chairman, considering that this Article has a component, thus, the National Council of State, which might be one of those contentious issues. Is it in order for the Member to delete it before it is approved or discussed.

THE CHAIRMAN: But I do not understand it to mean that the Member is, in any way passing any sentence on question of the National Council of State.

MR. HASHAKA JACKSON: Thank you, Mr. Chairman. Actually with your guidance the Member's intention was not really centered on the National Council of State as taken deeply and as some people think because I have started seeing it raise some bit of suspicion. The Members feel that the Parliament with its powers would virtually be responsible in this sub-clause (2) that the Commission shall be composed of a Chairman and not less than three other persons appointed by the President with the approval of the Parliament. So, surely I support the Motion that it should be the Parliament to be reported to. Thank you.

MR. MULONGO: Thank you, Mr. Chairman. Mr. Chairman, I just want to add my voice to my Colleague behind here about the fears of debating in anticipation of the National Council of State. Because according to this proposed Amendment, it is only the National Council of State that is sought to be deleted and in this Draft Constitution the National Council of State appears about 120 times. This means that everywhere the National Council of State appears will be sought in favour of other organs particularly the Parliament. Mr. Chairman, I think it will be good for us to suspend our debating the issue of the National Council of State until when that time comes.

DR. KABERUKA: Mr. Chairman, considering the fact that this National Council of State appears from now on, in the remaining Chapter seems to be dominant. I would move that may be we should, since there is nothing contentious on that Chapter, bring forward that Chapter, we deal with it and then finish with it and then proceed accordingly rather than going on saying that we delete, and so on.

THE CHAIRMAN: But you see, that will complicate our work. Are you suggesting we hold completing this Chapter?

MR. MALIRO: Thank you, Mr. Chairman. Mr. Chairman, I oppose the Motion for the following reasons: This National Council of State is occurring in most places where the President is empowered to appoint high ranking officers. It means if we take it here as an Amendment, wherever we meet it, we are going to be discussing it, taking a lot of time to see whether we cancel it out or not. That is why I was proposing, Mr. Chairman, that we can do two things:

(1) We can either discuss the National Council of

State and dispose of it so that wherever it appears we simply cancel it out and replace it with Parliament. (2) Or alternatively, if that is the only Amendment, we can leave it as it is. Then after we have finished with the National Council of State wherever that statement occurs we go back and cancel it. That will save much of our time.

MR. KIWANUKA SAM: Thank you, Mr. Chairman. I do support the Amendment on certain grounds. What I have in mind is that though the National Council of State is there, what we support to be inserted is the Parliament. This does not mean that the National Council of State will go. But what we are after having *Parliament* inserted here.

MR. SSENDAULA: Mr. Chairman, the issue right now is not the issue of the National Council of State but it is the weight of the matter that we are considering. Under this Chapter we are considering a Commission on Human Rights. If Human Rights have to be respected in this country, and this is the area where we have been so much lacking in the past, the issue of appointing the Chairman, under the entire Members of the Commission should be a duty of the National Parliament. Even if we put in place, and I repeat, even if we put in place the National Council of State, it should be allocated other duties. But the duty relating to this Commission should be directly allocated to Parliament. I support the Amendment. I thank you.

MR. ODUR: Mr. Chairman, the main thing is that really we are not after the composition of the National Council of state or anything like that. We are saying that the appropriate body to approve the appointment of the Members of the Uganda Human Rights Commission should be the President approved by Parliament. That is all our aim. The reasons are that we wanted this body to be independent and if you want it to be independent then it means that the officers who are going to be appointed to main the body should not be under the control of anybody and should not be under the direction of any individual and therefore, it is only necessary that we place the responsibility of scrutinising and approving the appointment to the National Representative of the people. As far as I am concerned, the National Council of State in its present composition is not suitable. In fact I find that it undermines the power of Parliament. Thank you.

THE CHAIRMAN: I now put the Question that the word '*National Council of State*' be deleted and in its place the word '*Parliament*' be inserted.

(Question put and agreed to)

THE CHAIRMAN: I now put the question on Article 76, as amended, do stand part of the Draft Constitution.

(Question put and agreed to)

MR. KIMERA: Mr. Chairman, we have an Amendment on Article 81.

THE CHAIRMAN: What has happened is that along the way a number of Amendments have come through but I am not quite sure that they have benefited from the Legal and Drafting Committee.

MRS. MARGARET ZZIWA: Thank you very much, Mr. Chairman. I was not very comfortable with the Report of the Chairman of Legal and Drafting Committee and I felt Mr. Chairman, that it should be put on record. Because when we went to the Legal and Drafting Committee, we had a general feeling that is one of the most important commissions which at least we would need to address on its composition. Mr. Chairman, there was a general feeling that we should have several other commissions to which representation would be looked into. But the way the Chairman put it across the Floor, Mr. Chairman, looked as though it would be upon the Floor. He even did not put in the element of what kind of representation we wanted to bring forward. So, I thought, Mr. Chairman, you could just give me a minute so that it goes on record, and when it comes to the appropriate minute, Mr. Chairman, it will be an appeal to the House already made that we should give a consideration into gender alignment, Mr. Chairman.

THE CHAIRMAN: The Chairman reported and I think I heard him correctly, that the question of appointments, not just to this one, that all constitutional bodies will be the subject over a gender sensitive clause to be inserted elsewhere later on. Now, we cannot begin debating in advance what we intend and to include in.

There is article 77. On article 77, there is an amendment by Hon. Mulenga and Hon. Omara Atubo dated today. There is one on article 78 by Hon. F.

Egunyu, Hon. Sam Engola also today's. There is another one by Mulenga and Hon. Egunyu also of today on article 78.

MR. CHARLES OWOR: Mr. Chairman, unfortunately those proposed amendments have just been tendered in now, and we cannot sanction them since we cannot meet now as a committee to look at them. But we still nonetheless say we probably give the description to the Chair to see whether we should discuss them now or not.

THE CHAIRMAN: It would be good if we disposed of this chapter today. It is now after 1.00 O'Clock, I would suggest that these are circulated to the Members now, and because what we have is the one at 42 on article 81 - but these now bring in a new situation. I would suggest that they do not seem to be straight forward. Let them be distributed to Members and then we shall discuss them after lunch.

MR. CHARLES OWOR: Mr. Chairman, I would say that I would go along with that proposal. I would like also to make one final report, that the committee has completed considering Chapter 3. I think the House will recall that the committee had been asked to look into chapter 3 and see whether some of those articles could be distributed to other parts of the draft constitution. This work is now completed and is being typed and we are sure that by Monday this work will be ready for the consideration of the Assembly. Thank you, Mr. Chairman.

THE CHAIRMAN: Are there any other amendments on this chapter so that if these are the only ones, when we come back we deal with these ones only.

MR. CHARLES OWOR: Mr. Chairman, there is none that we know of at least. The ones which we tendered in yesterday, we considered all of them, and if any would come over lunch time it would be a different matter.

MR. BASOGA NSADHU: I thank you very much, Mr. Chairman. I was only wondering whether we have abandoned the procedure of the honourable delegates submitting their amendments to our committee duly debated, synchronised, and then submitted here.

Because the practice which we are now introducing, Mr. chairman, is that, Members have thought

of amendments that were not taken to the committee but they are being circulated here without being synchronised by the committee so that we begin debating them. It gives us an element of not following the procedures which ourselves have put up. The committee Chairman or the one who has spoken on behalf of the committee says, they considered all that there was, and what you are now giving us has never been submitted to them. What procedure are we following. Why don't we simply continue and deal with the chapter and ignore those amendments - I have avoided using the word smuggling - why are they being smuggled in at the last minute? Why don't we follow the procedure? Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Mulenga you appear in many of these amendments, what have you to say about this very important submission with regard to agreed rules of the game. Are you actually smuggling?

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, I am not smuggling in any of the amendments. What I would concede is that, I am late, I have given copies of these to the Chairman, Legal and Drafting Committee in the hope that before we reach these articles the committee will have met. But unfortunately, the time or rather the speed at which we have gone through the previous articles was very fast. But there was no intention of smuggling, I have already made available these copies to the Chairman of the Legal and Drafting Committee.

MR. PETER AKURE: Thank you, Mr. Chairman. Mr. Chairman, we have started as a committee, we should have nursed everything. Now when some amendments have been brought, without even being referred to that committee, it means therefore, that these people who are smuggling in their amendments have rejected that committee. They do not have faith in it. Why do we then therefore, accept these amendments which have never passed through the Legal and Drafting Committee. I think these amendments may be considered some time later.

MRS. DHUGIRA OPOTI: Thank you, Mr. Chairman. Under our rules of procedures, page 11 there is supposed to be amendments without notice, and it reads: Clause (15), 'An amendment to an article may with the leave of the chairman be proposed without notice if it is relevant to the article

under consideration in the assembly, or in a committee of the Assembly. Mr. Chairman, I beg your guidance on this, and particularly this issue be put in, as you say we have to finish it and move on to the other articles. Thank you.

THE CHAIRMAN: No we set up a Legal and Drafting Committee, and our rules which empower the House refer matters to it. We agreed that it should assist us by synchronising and going over proposed amendments, and this has helped quite a lot. Because as they reported this morning, yesterday alone they were faced with over 40 amendments which they reduced to 6. But I think the most important point that was made by Hon. Mulenga was that, he was caught up by the speed at which we are working rather than that he was seeking to smuggle in. Now we can choose from two things; we can choose to be purists and say, we do not handle these matters until they have gone to the Legal and Drafting Committee. In which case we would have to wait until Monday to finalise because cannot the committee has to meet and come back with the report.

But I had looked at these things quickly without going into details. In my view, they are not very long. If Members look at them over lunch time, when we resume if there are serious objections because of the content, then we can say sorry we do not proceed let us go to the Legal and Drafting Committee. If we think we can handle them, then we proceed. I think with that we should adjourn for lunch.

THE CHAIRMAN: Hon. Delegates, we were at article 77, and we received during the proceedings of the morning proposed amendment to article 77 by Hon. J.N. Mulenga, Hon. Omara Atubo. No doubt delegates took time over lunch to look at these and I think we agreed that if we can manage to dispose of this Chapter today, we shall have achieved something. So I would like to ask Hon. Mulenga to move an amendment and we discuss it hopefully we do not collapse to the point of voting before we have a quorum.

MR. MULENGA: Thank you, Mr. Chairman. The first amendment I wish to move is in regard to Clause (3) of article 77 in paragraph (a) which reads *"adopt its operational guidelines and rules of procedure and commit persons for contempt of its orders in accordance with the Rules of court"*.

Mr. Chairman, I am moving that we delete the words

in the first line to the end of that paragraph. That is to say, *"and commit persons for contempt of its orders in accordance with the rules of court."* If I may state the reason-

THE CHAIRMAN: That is if - You are seconded by Hon. Kitariko and others and Hon. Atubo.

MR. MULENGA: Thank you, Mr. Chairman. The purpose is to remove that expression and transfer it to article 78 as I shall illustrate later. The reason being that article 77 is about functions of the Commission whereas this provision is to give powers to the Commission to commit persons for contempt, and the powers for the commission are provided for under article 78. Although, Mr. Chairman, the definition of functions includes powers, I find that it is wrong to say, the functions of the Human Rights Commission include committing persons for contempt.

THE CHAIRMAN: Where is the definition, if you do not mind?

MR. MULENGA: The definition is in article 286, Mr. Chairman.

THE CHAIRMAN: Functions include powers and that is a very lax definition, I must say. Because having done that, then there was no point to talk about powers of the Commission. We should only talk about functions right through. But they divide them and I agree with you.

MR. MULENGA: Mr. Chairman, they are divided and I thought that it would more appropriate to put power to commit persons for contempt among the powers of the Commission. I beg to move, Mr. Chairman.

THE CHAIRMAN: This is in my view a very welcome observation. But that is not to prejudice the debate. I do not know whether we have the numbers to vote. Could the Clerk advise us. Could you discuss the other amendment on article 78.

MR. MULENGA: On article 78, Mr. Chairman, first. Mr. Chairman, I would like to add to article 78(1) paragraph (d) which will be to commit persons for contempt of its orders. In other words the paragraph read with the beginning of the Clause would read that the Commission shall have powers of the court, a,b,c,d to commit persons for contempt of its orders.

THE CHAIRMAN: We have not made much improvement in our status. Can I suggest that Hon. Mulenga goes on to discuss the proposed amendments to article 78(3).

MR. MULENGA: Article 78(2), Mr. Chairman.

THE CHAIRMAN: Where is that one? Is this the one with the Hon. Fiona Egunyu? Okay let us hear article 78(2). We have heard the amendment on article 77 and article 78(1) which essentially involves transferring a phrase from one article to the next purely on basis of presentation to make sure that powers are separated from functions properly. But this one is article 78(2). Let us hear that one as well as we wait to realise our quorum.

MR. MULENGA: Thank you, Mr. Chairman. This is a more substantive amendment as it seeks to restructure article 78 Clause (2) - the entire Clause, Mr. Chairman - and to introduce a new clause, Clause (3). Mr. Chairman, do you have the version that is headed 'Synchronise the Version'?

THE CHAIRMAN: What I have is dated 16th but it is not the one headed synchronised. I had not seen this one. It is moved by Hon. Egunyu and seconded by Hon. Sam Engola, Hon. Eresu and Hon. Omara Atubo.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, the amendment is to delete the present Clause (2) of article 78 and substitute it with the following: *'The commission may if satisfied that there has been an infringement of human rights or freedom, order,*
(a) *'the release of a detained or restricted person'*
(b), *'payment of compensation or'*
(c), *'any other remedy or redress'* to be followed by Clause (3) which should read: *'A person or authority dissatisfied with an order made by the commission under Clause (2) of this article...'* Please substitute *'of this article'* instead of *'here of'*, *'...shall have the right to appeal to a court of competence'* Mr. Chairman. Mr. Chairman, I beg to move.

THE CHAIRMAN: Is that seconded. Then if it is, then could you please make your arguments. Could you for instance indicate that article 78(2) has got three clauses.

MR. MULENGA: Yes, Mr. Chairman.

DR. KABAYO: Point of clarification. Mr. Chairman the clarification I seek is in respect to the proposed amendment to article 78(2). I am wondering what the difference is between article 78(2)a and article 73 Clause (3) which we have just passed?

THE CHAIRMAN: Let him present his case first, then we shall discuss it. May be some of these can be part of the presentation

MR. MULENGA: Thank you, Mr. Chairman. It will be recalled by Honourable Delegates that this morning we did pass an amendment which has an effect of enabling the Commission to make orders as opposed to recommendations. That is one of the effect of this amendment we are proposing here. In this draft, the current draft, it reads that the Commission may recommend to appropriate person or authority to take such action as appears to the commission necessary to remedy the entrenchment of the human rights or freedom including the release of a person or the payment of compensation. And (b) bring proceedings in a court of competent jurisdiction. That is the Commission may bring proceedings to the court of competent jurisdiction on behalf of the person whose human right or freedom has been entrenched seeking an appropriate remedy for the entrenchment.

In other words, under the draft as it stands now, if the commission on its own position or through complaints investigates and finds that the human rights or human right of a person or freedom has been entrenched, it will only make recommendations to the person or institution which has made the entrenchment that such a person should be released or should be compensated. And if that is not done, the commission would then on behalf of the victim go to court to sue the institution or authority or person who has done the entrenchment. What the amendment seeks to do, is to empower the commission to make an order after it is satisfied that, there has been an entrenchment. Considering the envisaged body or Commission headed by a Judge, the high court Judge assisted by not less than 4 other persons, will have conducted an investigation and satisfied themselves that a right has been entrenched, it seems odd that they should not have power to make the order. And that if its recommendation is ignored, then they would have to go through the process again of going to court because a judgement needs to be made.

The amendment seeks to make it possible that once a commission has carried out the investigation, it

should be able or 'have the teeth' - to use the expression used earlier this morning - to make an order that will be obeyed. And if the institution or the violator of the human rights is dissatisfied, we are saying in Clause (3) that, that body or that person should be able to resort to court rather than leave the burden on the Commission to take the matter to court. Here I would like honourable delegates to distinguish the Commission from a mere investigation agency like the police. We know that when the police investigates, it takes matters to court. But in view of the importance that is attached to this body and in view of the fact that the constitution is prescribing that the composition of the commission shall be a people of high integrity including professional ability, - the commission is to be chaired by high court judge or somebody suitable to be so appointed - such a body is competent or ought to be competent to make an order. And having made that order we say that if the government for example is just dissatisfied, either in terms of the compensation or orders, or where they feel that the person being ordered to be released ought to remain in detention, then the aggrieved party should go to court.

Mr. Chairman, I leave the rest for my cosponsor Hon. Egunyru to add on to my amendment, Sir.

THE CHAIRMAN: If your amendment is the first, do you still want to call it Human Rights Commission or Human Rights Court.

MR. MULENGA: Mr. Chairman, there is a modern trend of giving tribunals or commissions of this nature several powers of effecting their findings. I do not think I would call it a court merely because you give it powers to make orders. As we have said earlier on, we did pass an amendment to the effect that it can make an order for release. Similarly, an order for release under article 78 or an order for compensation does not necessarily constitute to the court.

THE CHAIRMAN: I agree with you but I wanted this matter to be clarified.

MR. MULENGA: I am much obliged, Mr. Chairman.

MR. TIBAMANYA: Point of clarification. Payment of compensation entails listening to the aggrieved party as well as the party who would be compensating. And in the Motion there is that

loophole, he has not told us how the compensation will be arrived at. Could the honourable Member clarify.

MR. KYEMBA KISAJA MAGOMBA: Thank you, Mr. Chairman. I would request the honourable Mover to clarify on provisions already made in (b) which imply that if human rights commission was intended to refer matters that come to it to the competent authority, or competent court with necessary jurisdiction -

THE CHAIRMAN: Which one are referring to?

MR. KYEMBA: Article 78.

THE CHAIRMAN: Article 78 has three parts to it.

MR. KYEMBA: Article 78(2)b talks about referring matters to the court of competent jurisdiction. I got an impression from the proposal before us that, Hon. Mulenga is suggesting that the Human Rights Commission will have probably unlimited jurisdiction to award hoax costs and compensation for any matter that will come to it. And I was just wondering what we are creating here, whether it is a super court or super commission.

LT. COL. NOBLE MAYOMBO: Point clarification. Mr. Chairman, my clarification is not very different from Hon. A. Tibamanya's clarification. Mr. Chairman, I think the spirit of this commission as quasi-judicial body is to expeditiously review these cases, and bring justice so that the emergency situation can be arrested and brought back to order. Mr. Chairman, in view of the fact that assessment of damages is an elaborate and complex matter, I would really seek clarification on how we shall achieve the ends of justice at the same time go into bogging down work like assessment for damages. Thank you, Mr. Chairman.

MR. RINGWEGI SAM: Point of clarification. Mr. Chairman, I have a problem with the intended amendment. Although the argument is that, the Human Rights Commission has been empowered to order releases, I still see a problem if we were to give it power of a court of law. Mr. chairman, your observation that by allowing the amendment we would actually be constituting the commission into a court to try these offences under the Emergency Act, is an observation which I would agree with. And I am not even persuaded by the answer that the

Mover of the intended amendment has given that actually when you order compensation you are not doing anything different except empowering the commission to investigate and provide any appropriate remedy.

My point of disagreement with the Mover, Mr. Chairman, is because, when you talk about compensation, you are already trying to put back the person to a position where the person would have been if that right had not been entrenched, then you would give monetary compensation to appease the victim. But Mr. chairman, if this is a Commission presided over by a Justice of the Supreme Court, there is a possibility that the other three Members of this Commission may not be lawyers. Therefore, they may not be in position to administer justice as would have been administered by a court presided over by a Judge of the high Court and also in which the right qualified persons like lawyers would have appeared. The other persons on the Commission may be non-lawyers. Therefore, to give them the power to assess adequate compensation in this case would actually be an enormous task, and we may not even arrive at a fair value. That is why I think when this draft was being prepared all these points were considered, and therefore, the Commission then thought it wise that the power to order compensation should still be left to the courts of competent jurisdiction. Thank you, Mr. Chairman.

I thought I did not ask for mere clarification, but I just wanted to contribute to the debate, that is why I am trying to give these points, Mr. Chairman. That actually compensation entails more than the procedural point whereby preliminary investigations are given and then the commission arrives at a decision on whether to release or not. Whether to release or not is also a procedural matter which can be, for example, if the police are investigating a crime they may find that there is no reason to hold this person any more or there is no sufficient evidence to warrant his being taken to court, then the police is empowered to release such a person on bond. Now, this is a similar situation whereby when the Human Rights Commission has reviewed a case of a detainee or a restricted person comes up with an opinion that this person should no longer be held, it has the power which we have already given to order the immediate release. But if we were to empower it to go further, and then assess compensation, Mr. chairman, we would definitely be instituting a court, and therefore, we shall be encouraging conflict of institutions

between the Human Rights Commission and the ordinary court.

Therefore, I would like to oppose the intended amendment. Thank you, Mr. Chairman.

MR. WACHA: Thank you, Mr. Chairman. Mine is specifically a clarification. I want Hon. Mulenga or one of his colleagues to try and reconcile the proposed article 78 (2) and article 77 (1) (d) which we have already passed. And what I want him to clarify is whether it is not the intention of article 77 (1)d, that after a recommendation has been made in Parliament, then some other body should carry out the recommendation rather than the Commission itself carrying it out. Thank you, Mr. Chairman.

MR. WANDERA: Thank you, Mr. Chairman. I stand to oppose this amendment. It, in the first place, Mr. Chairman, contravening the principle of natural justice. It places the Commission in an investigative position and also the same authority becomes a judge. Mr. Chairman, in the case of police, police may investigate the case, then the police decides whether there is enough evidence or not. In case of doubt, the police will take the case to court, for the court to determine whether the fellow is guilty or not. This is the same position, Mr. Chairman. This commission will investigate, make a decision that there is evidence against person (A) and the same Commission is the one to give remedy in the matter. In other words, Mr. Chairman, having already determined that person (A) is guilty of an abuse of human rights, it then has to sit as a court and determine whether the evidence it has collected is true or not. I do not see how it can really hold otherwise. It is obvious that it will determine that this person is guilty, Mr. Chairman.

Mr. Chairman, the only way of attaining justice is to separate these functions; an investigating cannot at the same time determine the guilt. To do so, would as Hon. Ringwegi has said would fuse the powers of the Executive and the Judiciary and then in the end this is just chaos. On that ground, Mr. Chairman, I beg to oppose this Motion.

COL. OTAFIIRE KAHINDA: Mr. Chairman, I stand to oppose this amendment because the essence of setting up a commission is to try to find out whether those detained under the state of emergency have had their human rights violated. What we are trying to do here is to set up a commission, but by the

nature of this amendment it looks like they are trying to set up a tribunal. I wish to know how the House sees this amendment. Are we trying to set up a commission to investigate or a tribunal to arbitrate?

MR. RUZINDANA: Thank you, Mr. Chairman. Now I would like to give some an opinion on this amendment and also some information since I happen to have some experience in these things.

Mr. Chairman, if we want to give power to this commission, I would think it should have power also to order a compensator to award compensation. It does not breach any procedures. There are countries where Human rights Commissions also do have power to award compensation and courts there do exist. Now, I think it is a question of what we are used to. We are not used to institutions also having similar powers. But I do think that, if we want the Human Rights Commission to be effective, it should actually have these powers. We in our work have recommended compensation, I remember there is a particular case where we did recommend compensation more than two years ago, the agency accepted but this compensation has not been paid, yet. Well we do not have the same power which I am saying the Human Rights Commission should have.

Mr. Chairman, I would like to support strongly that we give this commission the power to award and order compensation.

MISS BYANYIMA: Thank you, Mr. Chairman. Mr. Chairman, I would like to support the Motion. Mr. Chairman, over the years we have seen commissions here that make recommendations that fall on deaf ears. We have had commissions that expose people, even 'very honourable' people who do not have the shame to resign. We have seen commissions that have implicated people in crimes - heinous crimes - and these people have not been apprehended. I would like to see a commission that has got some power, some power to get these culprits.

Mr. Chairman, if we are unable to pass this Motion, I will want at least, that the commission if it cannot pay compensation at least, it should be able when it makes a recommendation on releasing a detainee that this recommendation is binding. And as in the case of the Human Rights Commission during a state of emergency, as we have passed under article 73(3), at least, in the case of someone being detained for no apparent reasons violating his rights and denying

him his liberty to live that, at least, the recommendation of the Human Rights Commission is binding.

But all in all, I would support the Motion, and if we were to fail I would like to move an amendment that will make it binding for the commission's recommendation on releasing a detainee. Thank you, Mr. Chairman.

MR. KAWERE: Thank you, Mr. Chairman. This is a matter of law, and you have ever been saying that the Judiciary must be given its independence. Investigating officers are not the prosecutors nor are prosecutors the judges. The Commission must be independent; let them investigate and recommend. We have got civil courts now - *(Applause)* - I am one of those who were detained, filled a suite, and I was paid compensation. But this compensation was awarded by a court of law. Let us not interfere with our court procedure, Mr. Chairman. Sir, and thank you.

MR. CHARLES OWOR: Mr. Chairman, I would like to say that this type of commission as being proposed by the Movers of this Motion is not uncommon, it is a body that has got power to investigate; to prosecute; and eventually to determine awards of compensation. This is quite common and normal as long as their decision is still subject to the ordinary court, and this is what the second clause of this amendment provides. That if somebody is dissatisfied with the order of the commission, he or she can appeal to a normal court for determination of the proper issues and eventually the order could be reversed or sustained.

Mr. Chairman, I believe that the main purpose of this commission is to expedite the prosecution of cases of human rights abuse. If we expedited up to the point and then revert to the normal delays where you make recommendations and the relevant authority just sits on it, I do not think this commission will have achieved its purpose. And I do not think anybody needs to be convinced here that this type of problem has been quite recurrent in Uganda where commissions of inquiries make their reports and no action is taken. And this is the danger which could arise. I believe that we should leave this amendment as it is and make sure that the provision on the appeal to the court is left and that would take care of the fears that the independence of the Judiciary would be undermined. Thank you, Mr. Chairman.

MR. SSEKANDI: Thank you, Mr. Chairman. I stand to support the Motion. The purpose of creating this permanent body of Human Rights Commission is to assist members of the public that might have suffered at the hands of government. We have seen that one of the functions of this commission is to investigate. When this term *to investigate* is used in respect of this body, is to say, that this commission will independently investigate not only wait to hear evidence from the complainants, but will have to summon the person responsible for having violated somebody's right to give an account. It is as a result of this investigation that a decision will be made.

We note that the composition of this body is quite high powered. The provisions provide for the Supreme Court Judge, or High Court Judge with three or so other people who are men of high integrity. I think in their investigation, while assessing the damages to award compensation, they will call experts and refer to other decisions to find out the quantum of damages. So I would support that they be empowered to award compensation so that an ordinary person does not have to go to two bodies to obtain appropriate remedy. If he goes to the Human Rights Commission and gives the account but and when the Human Rights Commission does not assist him, and simply advises him to go to another court, he will be frustrated. He may not have even the money to hire an advocate who will take this matter to a court.

So, I support the Motion that the Human Rights Commission is given powers to award compensation and make such appropriate orders. I thank you, Mr. Chairman.

MR. SSEKWEYAMA: Thank you, very much, Mr. Chairman. Mr. Chairman, I think one of the most single evil we want to remove by reforming our political system is the abuse of human rights. And I think, Mr. Chairman, like other speakers, the more independent we make it, the better. Mr. Chairman, we have also to consider that people who have been mostly the victims of human rights abuses, have been the ordinary people who are not lawyers; who cannot go and represent themselves in court and get compensation. But these are people who can be stuffed by red-tape.

So, I can see, Mr. Chairman, a situation where the Human Rights Commission does investigate a case of an ordinary person and orders release, and perhaps it would have also ordered for compensation for

what he has lost but because this ordinary person will have to go and start new proceedings in court, he may just give up and that way the injustice committed on him will not have been redressed. But Mr. Chairman, if that were possible, the Human Rights Commission will have spent money, time and energy so it would be double work for the same effort to be taken in court, both from the point of view of the victim but also from the point of view of tax payer's money. Because it is the same money that will have gone to the work of the commission and at the same time to court.

So, Mr. Chairman, for those reasons I think that it is important we give the commission its due place, that is full independence so that they can operate with full mandate and those who are supposed to benefit from it realise the benefits at the least cost. Thank you, Mr. Chairman.

MR. NSAMBU: Mr. Chairman, when you consider the question of human rights as we have been handling it since we started, it has taken fairly a long time. This means that it is a very important issue because a lot of people have suffered in the past. A person who is likely to be appointed a member of the team, must be somebody who can interpret whether the rights have been trespassed upon or not. Such a person definitely is in a position which can enable him to assess damage and loss caused to the person whose rights have been violated. Normally, when these commissions are going on, the person concerned engages legal assistance, and in most cases these people are very poor because they are taken unaware, they are not notified that on such and such day we are fetching you. So, you find in addition to their own sufferings, their families are suffering and they have to go to the advocates to assist them, who will expect to be remunerated probably immediately after the commission has given its decision. This means that if the legal professionals take it that recovery of damages will be through the court action then they might be reluctant to assist these people. In those circumstances some of them fear even to go back and sue these people. They think that if I go back to court, I might be fetched again. So to alleviate all these problems, it is better that these commissions are empowered to award something to the person who has been released by the commission. But if we leave it at that, definitely, we are saying that the people we are going to appoint are going to be laymen who cannot understand what is going on. But even if laymen were to be appointed for their

expertise, some where surely there must be somebody qualified in the field of legal profession to assist in the circumstances as they are intended to alleviate the problems and to do things quickly.

I think I must support the Motion as it is to the benefit of every person. In fact you people who are seated here, you are the first victims of these things.

MR. LANGOYA: Thank you, Mr. Chairman. Mr. Chairman, article 78 the Assembly is trying to give powers to the Human Rights Commission. This is now the time to give them enough powers, so that they can function efficiently without having excuses for not performing well because they were not given enough powers.

I would like, Mr. Chairman, to say that I support the amendment because I would like to see the Human Rights Commission avoid delays after it has proved that one's human right has been infringed, it is not good to sit and wait for months or years without receiving any compensation, but if the power is given to the commission you can be compensated in time and may be recover from the suffering in time also.

The third reason, Mr. Chairman, is to give the little powers to the commission, as it is put in article 78(2)b, to bring proceedings in a court of competent jurisdiction, it may not be done. You may be coming from long distances like Kitgum all the way to Kampala to go to court which may not sit and so on. So, I would like to support that we give the Human Rights Commission enough powers to deal with all issues. Thank you.

MRS. EGUNYU (Women Delegate - Kumi): Thank you very much, Mr. Chairman. Mr. Chairman, as one of the Movers of the Motion, I would like to make certain clarifications on issues that have been raised on the Floor before discussing my reasons for moving this amendment.

Mr. Chairman, Sir, it has been argued that the Uganda Human Rights Commission should make recommendations and leave it to Parliament or other authority to take action. Mr. Chairman, the experience of this country is that those who are supposed to act on reports say for example of Commissions of Inquiries have never taken appropriate action. In effect it means that all the resources and the time that has gone into investigations have never bore no fruits.

Mr. Chairman, it has also been argued that in the interest of natural justice, an investigating authority should not have judicial powers. I wish to point out to this House the fact that there are some quasi-judicial authorities, these are authorities which have both an executive and judicial role. And, furthermore, the fundamental principles of natural justice that were cited to defeat this Motion are actually complied with under Article 78(1) which affords an opportunity to both the complainant and the person alleged to have abused or infringed the human rights to appear before the Uganda Human Rights Commission and also for the production of evidence or for evidence to be adduced. For example, under Article 78(2)b, it has been argued that this matter should be referred to a court of competent jurisdiction but I would like to put it to the Assembly that the composition of the Uganda Human Rights Commission actually evolved in Article 76 (1) is made up of a Justice of the Supreme Court and Judges of the High Court or persons qualified to hold such office which in effect means that these people who are composing this Commission are actually competent enough in legal matters.

Furthermore, I would like to cite an example of other countries that have actually gone ahead to give the Human Rights Boards or Commissions powers to investigate. I will quote from an article in the Commonwealth Law Bulletin of January 1986 and the article is on establishing National Human Rights Commissions, page 230, it states that some of the legislation establishing human rights machineries in countries like New Zealand, Canada as well as Australia, have given these Commissions or Tribunals powers to investigate, hear and determine issues outstanding from unresolved complaints. And these Commissions can give remedies similar to those available in the courts such as damages and orders that the amendment seeks. Furthermore, there is also the example of the South African Constitution on the similar matter that where the Commission has investigated and it is convinced that actually there has been a human rights violation it should go ahead and provide for redress.

On those grounds, Mr. Chairman, I beg the House to wholeheartedly support this amendment. Thank you, Mr. Chairman.

MR. CHEPSIKOR (Youth Delegate - Eastern Region): Thank you Mr. Chairman for giving me the chance today. I am happy. Mr. Chairman following

the history of our country very critically, it is important that the Commission's hands are left open. We should not tie the hands of the Commission if we do this, it is like giving power from the right hand and then we take it away with the left hand.

Secondly, Mr. Chairman, for the effective implementation of the duties, the Commission should be given autonomous and prerogative powers without oppression so that they can do their work very clearly and effectively. Mr. Chairman, as long as they are doing the right thing it is clear that the Commission should have independence.

Then finally, Mr. Chairman this is one way of eliminating corruption and abuse of fundamental human rights and freedoms in our country. For long the Commissions in this country have been abused because they have been operating without independence. They try to implement their activities and government comes in to oppress them. Therefore, Mr. Chairman, the Commission should be given powers.

THE CHAIRMAN: I will ask Hon. Mulenga to respond to some of the issues which have been raised.

MR. MULENGA (D.P. Representative): Thank you, Mr. Chairman. Mr. Chairman, I would like to respond to technical issues raised by some honourable Learned Friends. One is that the proposed amendment might contravene the rules of Natural Justice in two ways. One, that the Commission will be a judge in its own cause. This was raised by Hon. Ogola and Hon. Kawere. The other is that the Commission would not hear the other side.

Mr. Chairman and honourable Members, I would like to respectfully reply that these arguments were misleading because they seem to have ignored the provisions of Article 78 Clause (1) paragraphs (a), (b), and (c). The purpose of these paragraphs is to give the Commission powers to hear. The Commission is not set up just to pursue the cause of one individual, it is to look into violations of human rights and assess whether there has been violations. It is not intended to be an advocate of one individual. That is why the composition is put to such high level of integrity and ability, protection ability. So, Mr. Chairman, as envisaged in this Draft Constitution is as Hon. Mayombo put it, a quasi-judicial body. So let us not be misled by the expression or the use of the word "investigate" and start equating it with the

So, on that count, Mr. Chairman, I would like to humbly submit that it was misleading to say that this amendment would make the proceedings of the Commission violate the rules of natural justice. Hon. Kyemba wanted to know if it is envisaged in this amendment that the Commission would have unlimited jurisdiction. In respect of compensation I would say, yes. Because you may find that someone should be awarded a hundred thousand or fifty million and if through evidence adduced through experts or witnesses it has caused, the Commission is able to say this is the appropriate amount. Then there is no reason why they should not name the amount but what is important as it has been pointed out by Hon. Charles Owor and the next clause which enables anybody who thinks that it is excessive to resort to the courts, the ordinary courts of law. So it has that role of being able to assess and determine. If someone says this is too much then he goes to the appropriate courts or rather the ordinary courts.

Mr. Chairman, Hon. Mayombo raised the question of whether the Commission has the ability as a quasi-body, to assess damages? Here I wish to say and, perhaps, I should add to the objection of honourable Delegate from Padyere, Sam Ringwegi, that there is a Judge, the others are not lawyers, therefore, the Commission may not have the ability like an ordinary court of law to assess damages. On the contrary the composition, Mr. Chairman, is such that it may be a richer body than a Judge sitting alone in the High Court where you have these other men perhaps of different disciplines - *(Interjection)*-

I am sorry, I had no intention of excluding women from the qualification, it is just that one takes time to get used to this modern gender language. So, Mr. Chairman, the composition of the Commission, far from disqualifying it from being able to assess, I think it makes it even more suitable but the most important thing is that it has these powers to summon and receive evidence from anywhere and from anybody. So this is really not an argument with due respect to Hon. Ringwegi, to say the amendment should be rejected.

Mr. Chairman, lastly, I wish to refer to the quotation that my Colleague, the co-sponsor has read to you from the Commonwealth Law Bulletin. It is very interesting because these bodies that are referred to which have been given similar jurisdiction are in countries which cherish, which always talk about the independence of the Judiciary and the separation of

powers. Through experience even these Jurisdictions have seen it fit to have a mechanism whereby a body like the Human Rights Commission should be given powers to adjudicate. Really this is what we are saying, adjudicate or assess but if there should be a dispute then we go to courts, ordinary courts for adjudication. Here the area being covered is to investigate and assess and order accordingly but if there should be disputes then that dispute will go to the ordinary courts of law. Mr. Chairman, I still ask Members to support this amendment.

THE CHAIRMAN: Hon. Delegates I do not really think we should continue debating this one. We have reached a state where there is nothing really substantially new to be added. What I can say is that the Chair is not allowed to give evidence but I know that even the Australian jurisdiction which I am acquainted with, they have not only one but two tribunals of this nature looking after the interests of the ordinary people but they can also award compensation in circumstances which are limited. This is without appearing to be contributing to the debate but now *(Interjection)*- You cannot call the Chairman to order unless you stand up and there are fifty-one of you but only after he has made his ruling. Now, let us put the question. I would like to say that we have the quorum so we can make decisions and so let us put the question. If we give one why not fifty? I think let us just leave it there and decide the fate of the amendment.

Hon. Mulenga and others have moved to replace paragraphs (a) and (b) of Article 78 (2) and also to insert another clause (3); and the present Clause (3) would become Clause (4). Let me put the question.

(Question put and agreed to).

THE CHAIRMAN: Now, since we are now in quorum, I would like to invite the House that we go back to the other matters on which we did not make a decision for lack of quorum when we started.

In article 77 we had two amendments, Hon. Mulenga could run through them quickly so that we make our decision on them.

MR. MULENGA (Democratic Party): Thank you, Mr. Chairman. Mr. Chairman the first was in respect of Article 77 Clause 3 paragraph (a) and the amendment was to delete the words "and commit persons for contempt of its orders in accordance with the Rules of Court" appearing in the second

and third line of that paragraph.

THE CHAIRMAN: I would suggest that you also speak to the second one so that we do not have to -

MR. MULENGA: The second amendment, Mr. Chairman, was to transfer the substance of those words to Article 78 to form paragraph (d) of Clause (a) which should read, "To commit persons for contempt of these orders". Those are the two amendments, Mr. Chairman.

THE CHAIRMAN: And also for the benefit of Members who were not there the amendments are essentially really to provide for proper writing of law in the sense that Hon. Mulenga is suggesting that the question of powers should be in clause 78 and that those powers should not be mixed up with functions. Because among lawyers I think there is fairly a distinction between powers and functions. You perform a function, you discharge a duty or a responsibility, you confer a power and you exercise a power, but here they are trying to mix all of them together. So the question then is simply one of shifting this mix up so that the question of the power to impose sanctions against the people who commit contempt on the Commission is within powers rather than functions and we could not vote on it for lack of quorum at the time.

Can I put the question on Article 77, Clause 3(a) as moved by Hon. Mulenga?

(Question put and agreed to)

THE CHAIRMAN: Article 78. We add at the end a new paragraph (d) to say "Giving power to commit persons for contempt of the orders of the Commission". I will put the question.

(Question put and agreed to).

THE CHAIRMAN: And so we have concluded these amendments on Articles 77 and 78.

On article 78, I think there is another amendment but before we go it, let me now put the question on Article 77 as amended.

(Question put and agreed to).

THE CHAIRMAN: Then, is there any other amendment on article 78? Hon. Omara Atubo do you have any?

MR. OMARA ATUBO (Otuke County): Mr. Chairman, I have a proposed amendment in the present Article 73(3) which I think becomes (4).

THE CHAIRMAN: It has now become (4) but we shall call it (3) for purposes of discussion. The Technical Committee will do the adjustments when they prepare the whole Chapter when we have completed it.

MR. OMARA ATUBO: Mr. Chairman, I beg to move that Article 78 Clause (3) be amended by deleting the clause and substituting it with the following: *'The Commission shall not investigate-*
(a) *the merits of any matter which is pending before a court or a Judicial tribunal and*
(b) *a matter relating to the exercise of the prerogative of mercy'*. Mr. Chairman, I beg to move.

THE CHAIRMAN: Would you like to omit (b)?

MR. OMARA ATUBO: Well, I will elaborate on that one.

THE CHAIRMAN: Yes, I can see a seconder, you go ahead.

MR. OMARA ATUBO: Mr. Chairman, the proposed Clause in the Draft Constitution states that it is intended to restrict the powers of the Commission not to investigate certain areas of violations if there are violations at all, that is, where matters are pending before a Court. The second one is on matters relating to foreign or international relations. And the third one is a matter relating to the exercise of the prerogative of mercy. The prerogative of mercy under Article 113 is exercised by the President on the advice of the Advisory Board of the Prerogative of Mercy.

Mr. Chairman, what I seek to do in the proposed amendment, is to reduce the area in which the Commission is being restricted. Secondly, is to define better what we mean when we say that the Commission will not investigate matters pending before a court or judicial tribunal. Mr. Chairman it is my considered view that the intention is not really that the Commission should not investigate any matter before or pending before a court or a judicial tribunal but rather that it should not investigate the merits of those matters. It is rather a blanket restriction on their powers of investigation

So, Mr. Chairman, we have seen it with the Inspector General of Government where matters have been arising, first of all, even before they go to court. A situation may arise where a violation of human rights is and investigation is commenced by the Human Rights Commission and the State or the Executive does not take that matter to court and the Commission commences its own investigations. In the middle of the Commission's investigations a decision is taken to take the matter to court. And, therefore, in a situation of that kind what does the Human Rights Commission do? Does it completely abandon its investigations and leave the matter to court or should it continue with at least investigate the merits?

Mr. Chairman, when I say the Commission should not investigate the merits those, who are lawyers will appreciate really what I mean, it is that the merits of a case involves issues of the actual trial of that matter. That is, if there is a criminal case pending before a court, the Commission will not investigate the actual prosecution of the case: the witnesses being called; the conduct of the Judge or the magistrate; or even the record of the court itself. But situations, Mr. Chairman, will arise and they could be very many where the man is complaining not of the actual trial but that before he was arrested some of his rights were violated in the course of the arrest, his properties were damaged, he was not taken before court properly and so on and so on. But the Commission is not going - and I repeat - to investigate the actual merits of the case. And I believe this is where really we should restrict the powers of the Commission and as it is popularly known to lawyers, the matter would be subjudice. But I believe that matters that do not touch the actual merits of the case can still be investigated by the Commission.

Mr. Chairman, administratively also one may say that you are likely to create a conflict between the investigation by the Commission and the investigations of the court or the courts' proceedings. Mr. Chairman, I believe that the Commission in its own wisdom will be able to judge whether the complaint of the human rights violation presented to it by the person before court is worth investigating and, therefore, it may say, "no, we think that the court will very competently handle this matter and therefore we shall not interfere with it at this stage". But there are cases which I am aware of where complaints were lodged before institutions similar to the Human Rights Commission which we have proposed in this

Constitution and those institutions went ahead to investigate the complaints even when the merits of the case were still before the High Court or before a competent Court and those institutions came out with their own investigations regarding the violation, particular areas of violations of human rights.

So, Mr. Chairman, I would like this Constituent Assembly to appreciate this rather fine distinction between the ordinary investigation of the violations of human rights and the areas where the Commission will not interfere with the actual investigations of the merit of the case before court.

Mr. Chairman, if I may now move to the reasons why I believe that the Commission should not be feathered or stopped in the investigations of a matter involving the relations or dealings between the Government and any other Government or international relations.

Mr. Chairman, let me say at the outset that the terms of reference or the Constitutional powers of the Human Rights Commission, are very clear. Because somebody will say that by removing Clause (b) you are going to allow the Human Rights Commission to investigate the foreign relations between Uganda and another country. No, because the Human Rights Commission is not supposed to investigate areas of foreign relations. The Human Rights Commission which we have formed here clearly states in Article 77 (1), the functions of the Commission. *"The Commission shall have the following functions-* (a) *to investigate at its own initiative or on a complaint made by any person or group of persons against any human rights violations"*. So the Uganda Human Rights Commission is not going to investigate contracts between the Uganda Government and IMF; it is not going to investigate the reason why it is going to be removed and that is likely to be misunderstood in three areas: (1) Extradition; (2) The activities of Interpol; and (3) Uganda is a signatory to various international conventions and treaties.

Now, if you leave this somebody will say, that the Government may conspire; somebody's human rights may be violated and somebody will be extradited back to Kenya, to Sudan or wherever as the areas of the human rights violations are now becoming even more and more internationalized. The Human Rights Commission in Britain in Europe has now got one body, so areas of Human Rights Commission bounda-

ries are getting narrower and narrower. So, I believe that by putting that Clause (b) there is likely to be a misunderstanding.

Mr. Chairman, I have no objection to the matter relating to the exercise of prerogative of mercy. I do not think the Human Rights Commission should investigate that, it is purely a Presidential exercise. And really the way it takes decision, and the exercise is purely his but I think that in area of (a) we can deal very effectively with the merits, areas of the merit of the case and in (b) we can safely delete it. Mr. Chairman, I beg to move. Thank you.

MR. WAGIRA (Kibuku County): I thank you, Mr. Chairman. Mr. Chairman, I have my reservations which I would beg the indulgence of the Chair to put to clarity and if my fears be founded then I will be persuaded to support this Motion. I truly believe that the Commission is not going to investigate any matter pending before court, if we have a bad government which wants to violate human rights and at the same time preclude the Human Rights Commission from investigating. The first thing they will do immediately on detaining a person or restricting him will be to commit that person to court and therefore stop any investigations about that matter. Mr. Chairman, I also find that it would be quite useful for us to leave the Human Rights Commission to investigate even those dealings that may have a direct bearing on the human rights. As the Mover of the Motion did put it clearly human rights violations are now becoming more global and less nation-centred. Mr. Chairman, I have a number of things to ask myself here. We are saying the Human Rights Commission should not investigate the dealings between the Government and another foreign body or Government but suppose the dealing is may be to lease a certain part of a country and displace some people and thus deprive them of their fundamental rights may be to have a property. Suppose it is to set up an establishment that has environmental hazard on the citizens of that country; suppose it is a deal involving that to export some people, God forbid, shouldn't the Human Rights Commission actually go ahead to investigate that?

Mr. Chairman, I would not like to debate in anticipation but in the Draft Constitution it is also indicated that one of the grounds for which a President might be impeached is by doing an act which is inimical to the economy of Uganda. The Human Rights Commission would be better placed here if,

for example, it can investigate any commercial transactions which seems to infringe on the rights of the people. For that matter, Mr. Chairman, if those grounds of mine be founded I beg to support the Motion wholeheartedly. Thank you.

MR. SSEKANDI: Thank you, Mr. Chairman. I seek clarification from Hon. Omara Atubo about his excluding investigations in the exercise of the prerogative of mercy by the President. I want him to assist me in a situation of this kind. You have an anti people President, he uses his death squad to silence people and to entrench himself in power. He goes on killing; people are arrested may be sentenced; he exercises his power of prerogative of mercy the criminals are set free. Another set is arrested, prosecuted, sentenced, he exercises his prerogative of mercy they are set free. This is evidence of abuse of office. Would the Mover suggest that the Human Rights Commission should not investigate the exercise of the prerogative of mercy in such instances?

THE CHAIRMAN: Let me hear other speakers before I ask Hon. Omara Atubo to react.

MR. MASALU MUSENE (Manjia County): Thank you, Mr. Chairman. Mr. Chairman, I support this Motion wholeheartedly and I shall specifically talk about deletion of (b) from Clause 3 because that one provides that, the Commission shall not investigate a matter involving the relations or dealings between the Government and any other Government and so forth. I state that the Commission should have the power to investigate in such relations. Because, Mr. Chairman and honourable Delegates, Uganda is a member of the United Nations Organisation and has ratified treaties thereunder especially the Universal Declaration of Human Rights of 1948 and it is a party to the International Convention against torture and other cruel, inhuman or degrading treatment which came in force in 1987. And Uganda as a member of the Organisation for African Unity has also ratified the Organisation for African Unity Charter on Human and Peoples Rights commonly known as the African Charter which came into force in October 1986. Uganda will, no doubt, soon ratify the International Convention on Civil and Political Right. Therefore, Mr. Chairman, this makes it imperative for the Human Rights Commission to investigate matters which are related to violations of human rights between Government and any other Government or International Organisations. For example, if the relation or dealings

between Government of Uganda and a foreign Government or International Organisation involve the breach of fundamental freedom then the Commission should investigate. We have foreign diplomats in this country or expatriates and they can complain that their rights have been infringed by any authority or person in this country or Government. A Commission therefore should have the powers to investigate in the interest of international cooperation and unity.

Mr. Chairman, although the fate of Chapter 3 is not yet determined but the spirit of Article 12 Clause 7 supports my contention. It provides that all individuals, groups and communities shall be free to have access to all regional, continental or international institutions dealing with the breaches of human rights and freedoms. So, of course, this is one of the national objectives and principles of State policies but you can see that it is in line with the argument I am advancing that Uganda, as a member of the international community, should allow our Human Rights Commission to investigate such matters.

Mr. Chairman, some countries have even gone as far as specifically putting specific provisions in their national constitutions in this direction. For example, the Constitution of Peru in its Article 305 provides as follows and I quote: "*When domestic remedies have been exhausted a person who considers himself injured in respect of the rights recognised by the Constitution may have recourse to international courts and bodies constituted in accordance with the treaties to which Peru is a party.*" So in that spirit, Mr. Chairman, to limit the powers of the Commission not to investigate matters involving relations or dealings between Government and international organisations, Mr. Chairman, will not be in line with the international treaties and obligations of which this country is a party. I therefore, Mr. Chairman support the amendment. Thank you.

THE CHAIRMAN: But could you indicate to us how the Tribunal will proceed for instance to compel attendances. We Are saying it can punish contempt, how can it compel attendance of nationals or functionaries of other states or international bodies to appear and testify or tender documents in the process of trying to find an answer. How do you intend to empower the Commission to do that? I am just seeking clarification for curiosity's sake from the Chair.

MR. MASALU MUSENE: Mr. Chairman, the Human Rights Commission could cooperate with other international organisations. For example, we have the International Court of Justice, we could empower the Human Rights Commission to cooperate with such organisations in assisting when and as it could be necessary.

THE CHAIRMAN: Let me hear from Hon. Katenta Apuuli.

MR. KATENTA APUULI (Conservative Party): Thank you, Mr. Chairman. I would like to appeal to Members that we should set manageable tasks. There are certain things that we are asking ourselves to do or our organs to do that cannot actually be achieved within the norms of international diplomacy. There is the Vienna Convention to which Uganda is a party which accords certain privileges to the international community and diplomats in particular that you cannot violate with this amendment we are trying to suggest here. The purpose of including (b) in this article was for avoidance of doubt of what the Commission can do and if you set to amend it to include international organisations you would be running against the tide of other already established conventions that Uganda has already committed itself to. I would like to also appeal to the Mover to help me as a lay person as to how materially his amendment of article 3 (a) differs from the existing proposal by the Draft. I thank you, Mr. Chairman.

MR. KAVUMA (Kyadondo South): Thank you very much, Mr. Chairman. I have serious reservations with this amendment, Mr. Chairman. In (a), first of all, as it originally appears in the Draft, I think here we wanted to protect the cardinal principle in law of not interfering with matters which are before the courts, the subjudice principle. Now we say no, we will now restrict this to not investigating the merits. You are creating a problem to those who are going to decide whether what you are now doing is really on the side of merit or you are investigating matters that should not have been investigated. Where do you put the border line? Secondly, I think if there are proceedings in the courts and then you have these investigations also going on there is a danger of causing some confusion which can even lead to a preempting of what would eventually come through a normal judicial process by a court of law. Mr. Chairman, I also see problems with the removal of (b) as it is being proposed. There

is a likelihood that the work of this Commission could endanger relationship and dealings between the State, between Uganda and other States. And I think we should try to avoid creating in our Constitution organs which may cause problems when they try to do what they are asked to do. Mr. Chairman, we have just made this Commission almost a court and normally I think courts have jurisdiction within the limits of the boundaries of their States. I am not comfortable with a provision which may seek to give jurisdiction to a court to deal with matters that are outside the borders of this country.

Mr. Chairman, it is for those reservations that I oppose the amendment and I think this kind of provision should not find its way in the Constitution. I would appeal to those honourable Delegates to stick to the Draft as it appears, because to my mind it takes care of what we want to achieve. I thank you Sir.

MR. MULINDWA BIRIMUMASO (Bukoto West): Thank you very much, Mr. Chairman. At first when I listened to the Mover he gave me the impression that this Commission automatically does not have to investigate relations between the Uganda Government and any other foreign Government or organisation. It was a sort of an assurance that it is not necessary even to mention but as the debate progressed I found that probably it is better to mention it than remain silent about it.

When I listened to Ambassador Katenta Apuuli, he wanted the Mover to give stronger reasons why he really feels that now the Commission has in some circumstances, to investigate these dealings and I would also request the Mover if he has very serious cases and even putting into account the possibility and the capacity of our Commission to investigate these dealings which might be violating human rights. He cited abduction, he cited extradition and possibly I would add on abduction from a foreign country but even I think if you go deep to investigate dealings between Government when you do not have the capacity to summon the other side here - because Governments are either protecting their interests or advancing their interests. So if the Mover really has a strong reason to tell us why he should think that the Commission must investigate foreign dealings or to show cause that the Commission will have the capacity to effect its investigations and whatever then probably I would be obliged to support him.

Mr. Chairman, on (a) if we mention the merits not to be investigated by the Commission, we are assuming that even the competent courts can have demerits and I think we are prejudicing our courts that they can mishandle cases. I think we should not build on the wrong path when we want to build a good future. We are saying that our courts are going to be competent and they will not be having demerits but the Mover tried to imply that the Government of the day might come to arrest you, take you to court and then if the Commission wants to investigate they will say no, the matter is before courts. But any way when we have covered that under what the Minister is supposed to do. He is supposed to report what the Commission has found, whether someone has been put in jail or whatever. I think the motive here is not clear and if the Mover does not give me very strong reasons why he feels this Commission should investigate foreign dealings, I would request Members to throw out this amendment. Thank you, Mr. Chairman.

MR. O'LET (Erute County South): Thank you Mr. Chairman. I support this amendment. If you look at the amendment of (b) you will see that it was included in the Draft itself by mistake because Article 77, Clause (1)h indicates that one of the functions of the Commission is to monitor the Government's compliance with international treaty obligations on human rights. Then how can you again include that it should not investigate when what is in 77 (h) which we have already accepted as a function runs counter to what was again included in (b). So I support the amendment to leave out (b). Thank you, Mr. Chairman.

MRS. MWONDHA (Women Delegate - Jinja): Thank you very much, Mr. Chairman. When I looked at the amendment on the first sight I thought I was obliged actually to may be support it. But on second thoughts and on further analysis I found that if I support, it is going to prejudice the independence of the judiciary because it says, "*The merits of any matter which is pending before courts can not be investigated*". Now, one wonders if a case is pending in a court of law the Commission may have to interfere with the handling of the case on the pretext that it is investigating but investigating on matters other than the merits of the case. Now, how is this investigation going to be made and how are the results going to be got?

So on one hand, actually if this provision is left to stand or if the amendment is passed that is what it

should mean, it is going to encroach on the independence of the judiciary so that there will not be any impartiality or freeness when the court is handling matters. And, secondly, I find the word *merit* here actually very slippery and very confusing because to me when you are considering or looking at a case you have to look at the demerits and the merits of the case and then you decide the case according to its own merits that is when the party which has sued or the State that has filed the case can win and you usually talk about the merits of the case after a decision. Now when we leave that word '*merits*' in this amendment then it would mean that the Commission's interference will tantamount to either a review of a decision that has been made by court. So on those ground I am a little bit skeptical in fact I am obliged not to support the amendment.

Secondly, Mr. Chairman, on the deletion of Sub Clause (b) in the Draft Constitution I think it would be very dangerous and very fatal to our country if we deleted it as it is here. Because one honourable Member said that as far as the national objectives are concerned it is within our objective to respect the international treaties and the rest of it but I find it so difficult to get satisfied with such a reasoning because the Human Rights Commission which has been established under this Constitution is not going to be an international Human Rights Commission, it is a Uganda Human Rights Commission. So if it is the Uganda Human Rights Commission then there is no reason why we should extend the tentacles of this Commission to investigate into the affairs with Governments which are external. Thank you very much, Mr. Chairman.

THE CHAIRMAN: We shall hear from Ambassador Ogola.

MR. OGOLA (West Budama South): Thank you, Mr. Chairman. I am persuaded to support the amendment on the Floor because I feel that the conduct of the Human Rights Commission which we are to form under this Constitution is essentially for our own people. The fear that in the amendment as proposed it may be involved in investigating the conduct of other Governments, is misplaced because that is not the central issue in this amendment.

Mr. Chairman, Hon. Ambassador Katenta Apuuli invoked the Vienna Convention. The Vienna Convention Mr. Chairman, is based on reciprocal self interest and that means that the Governments which recognise each other and extend to each other diplo-

matic recognition shall conduct their affairs on the basis of reciprocal self interest. On the basis of reciprocal self interest that, 'what I do to you, I expect you to do to me'. But that convention does not cover criminal offences, and therefore, if an Ambassador of one country commits a crime in the country of accreditation, that country has a right to call that Ambassador to order and it is true, can arrest him, but will not try him unless it has received the consent of his own government. But that will not erase the fact that there was a crime committed! Now, that crime committed, therefore, remains of interest to that Ambassador's own country, therefore, his country has a right to investigate him, and that investigation may go to the country of his accreditation, and indeed if this country has got good relationship with the other government, the other government will provide all the information at its disposal because they are in good relations.

So, if we are saying that we cannot extend these investigations to the other country, we are simply trying to fear or rather to cover crime, and I feel that, that example was not a right example to give, Mr. Chairman. Mr. Chairman, secondly I do concur with this Amendment because of what Hon. O'let referred to in Article 77 section (h) which gives the Human Rights Commission we are proposing to monitor the government's compliance with international treaty obligation on human rights. Now, thirdly, this Amendment helps the human rights convention, actually, to protect the interests of our citizens even outside the borders of our own country. For example, if one government of ours should someday go into war with a neighbouring country and the war has not been authorised by Parliament, and my daughter or my son is forced to fight such a war, in a country with which we are otherwise at peace, then it is possible for me to go to the Human Rights Commission to demand for my child's whereabouts. And if he has disappeared in that undeclared war, I should have the right of investigation so that I am told exactly where my child is, where he has disappeared to and why the state committed my child to die in a war which was undeclared. That is within my right and it is within the right of my country to protect myself, to protect my children, and therefore, we cannot say that this article is misplaced. Thank you very much, Mr. Chairman.

MR. BAGENA (Bufumbira County East): Thank you very much, Mr. Chairman. Mr. Chairman, I have been listening very carefully from all the previous speakers and I have failed to get one

convincing reason of retaining either the proposed Amendment or even the original Article 3 in the Draft. Mr. Chairman, Hon. Wagira asked questions and I have been listening trying to find answers to his question. His questions, actually, upset me and as I read a little back and I find we are contradicting ourselves when we say we want to eliminate human rights violations and yet the very body we want to institute we are not allowing it to do its work.

I have a question under article 77(1)h, how can the commission monitor the government's compliance with international obligations on human right when it is forbidden to investigate what appears under clause 3(b)? Mr. Chairman, we are making a Constitution for Uganda, and that article 3, I am sorry to say, was smuggled out of a Ghanaian Constitution of 1992 article 219 clause 2. So, I beg to move that we amend that article by deleting it because it is not Ugandan. Thank you, Mr. Chairman.

THE CHAIRMAN: The Hon. Bagena is seeking to move an Amendment which totally prejudices even the existence of Hon. Omara Atubo's proposition on the Floor. Now, if it is seconded and we deal with it and it removes that Article then there is nothing else to discuss. So, now we cannot proceed with Hon. Omara Atubo's Amendment. We now proceed with Hon. Bagena's Amendment. Because if it is carried it removes the whole paragraph, and if the paragraph falls actually, he is removing the whole clause, and if the clause falls, there is nothing else to amend. Therefore, Hon. Omara Atubo's Motion would also fall by the wayside. Because he is seeking to amend and retain some things. So, now we are going to ask Hon. Bagena - he has given his reasons in advance - I do not think we have to go back to him. Let me hear one or two speakers on this one.

MR. OWINY-DOLLO (Agago County): Thank you, Mr. Chairman. Mr. Chairman, I find myself strongly persuaded by the latest proposal. Mr. Chairman, it is idle and unnecessary for us to say the commission shall not investigate any matter which is pending before a court or judicial tribunal. We have already provided here, Mr. Chairman, that this commission will have the powers and status of a court. It is a law that no court can either investigate a matter which is pending before another court. So, we do not need to provide for it here.

In respect of clause (c) a matter relating to the exercise of the prerogative of mercy. Mr. Chairman, the prerogative of mercy as I understand it in the past

constitutions and even in this present Draft is a discretion given by the President of the country. As a matter of fact, he sits like the final court as it were, after every court of the land has already done its part, the President now comes in. It is true that normally he does this on the advise of some committee established. But now when the final court of the land, a court which is even above the Human Rights Commission as a court, has made a decision which is a discretion, how can the Human Rights Commission investigate powers which are discretionary? One can only understand that if there were anything to query then may be the sectoral committee of Parliament on presidential affairs would be the most competent body to query the discretionary powers which are given to the President. So, I think this intended amendment, late though it be, has a lot of sense in it. Thank you.

MR. LIIGA (Buvuma County): Thank you, Mr. Chairman. As debate progressed on the proposed Amendment by Hon. Omara Atubo I was almost persuaded to agree with his Amendment, but I have developed a feeling that this Amendment is absolutely or goes against the whole principle of the Human Rights Commission, and I find myself agreeing with the last Mover that we delete the whole of clause 3 from the Constitution. The thing is this; if the commission has quasi-judicial powers, it will necessarily have to investigate some of these matters as a court. Now, if you say the commission should not investigate the merits - what are these little things which it should not investigate? I think before the commission starts on investigations, it starts with merits of any case.

Now, we have already given the commission some powers to act as a watchdog on government's compliance with certain obligations and some of them international. If we have done that already, it seems we are giving with the left and removing with the right by saying that the commission should not investigate some of these international obligations which government may be deliberately or inadvertently overlooking. If it is deliberate, then the commission should take action and get government to move in the right direction. If it is by oversight then the commission should call government to order and see to it that government complies with its international obligations.

Finally, Mr. Chairman, the prerogative of mercy, I think is an area where the commission could come

in quite strongly and put government on the right course. Although we say the President shall exercise the prerogative of mercy, we know there is a small commission or a small body of people who should do this job. Now, as human feelings go some of the members of this commission of the prerogative of mercy may be persuaded not to give the benefit of that prerogative to the victims. We have seen circumstances in this country or instances where a relative is sentenced to death and one of the people supposed to investigate or rather, to recommend under the present set up is a DC or rather these people we call the District Executive Secretaries. Now, he is supposed to see whether he can persuade the President to grant this man this prerogative. At most times you find these things fail. When I was still in the Chair in the High Court as a Deputy Chief Registrar, I was seeing these things happening. The DC simply says no the people do not want this man around the village, the sentence must be executed. Whereas the truth is the reverse.

So, as far as I am concerned and I hope I can persuade the honourable Members of the august House, to delete clause (3) altogether from Article 78 and leave it to the commission to see how it goes about its duties. Thank you very much, Mr. Chairman.

PROF. SENTEZAKAJUBI (Kyadondo North): Thank you very much, Mr. Chairman, for allowing me this time to support the Amendment on the Floor. Mr. Chairman, I had originally been persuaded to support the original Amendment which, at least, left out some of the provisions of this clause and that was the prerogative of mercy. But after Hon. Ssekandi's question about the possibility of a President who would release every murderer perpetuating against actions of human rights, I was then persuaded that even that one should not be left in. Mr. Chairman, international organisations can also infringe upon human rights either by omission or by commission. For example, the Human Rights Commission should have the right to question the role of a particular international organisation during a particular regime, like, His Excellency, Yoweri Museveni had the occasion to complain that while Uganda has been suffering international organisations have looked on. I quote him, "*while Uganda perished the rest of the world kept largely silent*". Ugandans felt a deep sense of betrayal that most of Africa kept silent. This was by omission, they did not do anything. But there could have been some cases where some of our neighbours also were aiding these actions which were against human rights -(Interruption).

CAPT. BABU: Point of information. Mr. Chairman, dealing with international organisation or international foreign countries is also violating people's human rights, especially, with toxic dumping of radioactive materials, where, leadership of certain countries have been bought, they have allowed international bodies to dump nuclear wastes in those third world countries. And when this comes, the lives of the citizens of those countries are in danger. Here is a very important point that we must all be very careful of, because right now most of the developed countries are looking for countries which are weak in terms of economy and they use money to dump these wastes in these countries. Mr. Chairman, that is the information.

PROF. SENTEZA KAJUBI: Mr. Chairman, I am grateful to Hon. Babu for that information, in fact, it does not stop on nuclear wastes only but there have been commodities which have been condemned in other countries and then dumped in our countries, sometimes with connivance, sometimes, it is our ambassadors abroad who do not keep a very keen eye. So, when that one happens, I think the human rights commission should have the right to investigate such actions.

Mr. Chairman, there could also be a possibility of a country instituting a form of slavery between this country and a foreign country. From time to time there have been rumours that children have been disappearing and possibly on suspicion that these children were being sold to other countries where they want slaves from Africa - cheap labour. So, if there were such a suspicion I think the Human Rights Commission *-(Interruption)*.

MR. SSEKANDI: Point of information. Thank you, Mr. Chairman. In fact, there are instances where you find that torture gadgets are allowed in countries to be used to violate people's rights; would the commission stop enquiring into such activities *(Applause)?*

PROF. SENTEZA KAJUBI: Mr. Chairman, I think I should wind up, I think we have got enough information from the Floor to persuade the House to support this Amendment. Thank you, Mr. Chairman.

MR. RUHAKANA RUGUNDA (Kabale Municipality): Thank you very much, Mr. Chairman. Mr. Chairman, I would like to oppose the Amend-

ment brought in by Hon. Bagen. Mr. Chairman, I oppose it because this clause is a very, very important clause, it declines the limitations of the Human Rights Commission that we are putting in place. If we just put it across without clear demarcation lines we will get into problems. Mr. Chairman, it is right that the Human Rights Commission should not investigate matters that are under other courts, in fact, that will be causing conflict and will be undermining the institutions that we have ourselves set up. Mr. Chairman, if we find that a court has a problem instead of asking Human Rights Commission to investigate it, we should solve that problem facing that court and strengthen that court instead of escaping to set up another institution.

Mr. Chairman, the second point is about relations with other countries. Uganda is a landlocked country, hence the relations with a neighbouring country are very, very crucial. The state has capacity to get information from security organs and other institutions and can, therefore, better handle matters of relations with other countries. If you bring the Human Rights Commission in matters involving international relations, you will end up having a mix up and meddling of international relations, and in fact, Mr. Chairman, this could easily throw Uganda to war with a neighbouring country. Mr. Chairman, the matter is a serious one and all the Hon. Members know how delicate the relations with neighbouring countries have sometimes been in the past. Fortunately *-(Interjections)*

Mr. Chairman, on the third point, actually, Hon. Ssekandi did raise an issue and said there might be a President who could be conniving with violators of human rights and later on he could cover up these people who may have been condemned to death. Mr. Chairman, in such a situation, the human Rights Commission will not be having an environment in which to operate. So, in fact, if there is already a President who is behaving in that manner the critical point would be not to struggle about the prerogative of mercy but, actually, to struggle to remove the regime that he may be heading and remove such a president from power.

So, Mr. Chairman, in conclusion, this is a very, very important clause which defines limits of Human Rights Commission and which ensures that the state continues to play its role in the management of its relations with other countries and other organisations. I strongly oppose the Amendment. Thank you, Mr. Chairman.

MRS. MUKWAYA (Mukono County South): Thank you very much, Mr. Chairman. Having listened very attentively, and from an assessor's point of view, I think the clause has been given a good surgery and I am convinced that I think I oppose it, but I beg that in the spirit of finishing the chapter, you put a question, Mr. Chairman.

THE CHAIRMAN: Okay, I think we have talked enough on this one. The question is simply this now, at this juncture. We have to declare ourselves on whether we are saving the clause or not before we even have a compromise, because this is fundamental.

Hon. Bagenza with secondment of Hon. Senteza Kajubi has moved that we delete clause 3 of Article 78. Now, let me put the question before you conclude. The question is for deletion.

(Question put and negatived.)

THE CHAIRMAN: Now we go back to the Motion by Hon. Omara Atubo. The Motion by Hon. Bagenza failed, therefore, we have the Motion by Hon. Omara Atubo, which we had discussed extensively. What he seeks to do by that Motion is to amend that Article by deleting the Article completely but substituting it with the following: Instead of three paragraphs it should have only two paragraphs to read: "*The Commission shall not investigate the merits of any matter which is pending before a court or judicial tribunal*"

(b) '*a matter relating to the exercise of the prerogative of mercy*'. Now this would have the effect of recasting (a) by narrowing it and omitting (b), but (c) would remain as it is. Now, I will put the question.

(Question put and agreed to.)

THE CHAIRMAN: So, the clause remains and now let us put the question on article 78 as amended.

(Question put and agreed to.)

THE CHAIRMAN: Now, honourable Delegates, let us do it this way. I put the question on Article 79.

(Question put and agreed to.)

Article 80 agreed to

THE CHAIRMAN: We have an Amendment on Article 81 *-(Interjections.)*-Honourable Delegates, the position is that unless we change our rules of interpretation, we did remove the word 'National Council of State' somewhere, did we not, and put there 'Parliament' in article 76(2). Now, you would cause a lot of confusion if you were to leave the National Council of State here, because the very procedure for appointment should be followed for removal. So, we shall as the Hon. Members to move it, maybe.

MISS. RAINER (Women - Pallisa): Thank you, Mr. Chairman. Ours is a simple Amendment. I propose to move an Amendment to Article 81 by removing the words, '*the National Council of State*' and insert '*Parliament*'.

(Question put and agreed to.)

Article 81 as amended agreed to.

Article 82 agreed to.

Article 83 agreed to.

THE CHAIRMAN: We have done a Chapter. Now, there may be one or two matters that I think we referred in this Chapter. There are one or two little matters, I think, somewhere which will be coming back.

MR. OWOR (Aswa County): Mr. Chairman, I just wanted to refer to what you have just said that there were a number of issues that were referred to the Legal and Drafting Committee, that includes Article 68 - that was a new insertion after Article 67. And I think there were something else on widows and widowers, I suppose, that somebody wanted to bring up, and it was referred.

THE CHAIRMAN: No, on widowers, I think, there was a general view that the gender issue was one-sided and people wanted to know if they were entitled to bring in issues to protect men or something like that, and we said that, that freedom by the Constitution is not closed, but I do not think we made a specific reference. What I recollect is one relating to information.

So, subject to those mopping up operation which we shall carry out in the week, the actual work on this very sensitive Chapter 5, the substantial work is

completed and I must congratulate the Members, the honourable delegates for the good job done. It has taken us time, but human rights are equally important. Thank you. Hon. Kaberuka what do you like to say?

MR. KABERUKA: Thank you, Mr. Chairman. At this juncture I did pass a paper on which was written a Motion which I intended to move. Now that we have come to the end of this Chapter I would like to find out whether this is the right time for me to move it, Mr. Chairman.

THE CHAIRMAN: This Motion, if I recollect, did not have anything to do with the substance of the matter we have just dealt with. But I think it was suggesting an approach to our work which, maybe, you could state briefly and see how we react to it.

MR. KABERUKA: Thank you, Mr. Chairman. The substance of my Motion was that the word 'National Council of State' which we have met twice in this Chapter does appear almost on every page in the subsequent work, and I was wondering whether this is not the time for us to address ourselves to that so that we clear it and move clearly smoothly and then making arrangements here and there.

THE CHAIRMAN: What Hon. Kaberuka is suggesting is that because there are many references being made in various provisions of the Draft Constitution to the National Council of State, we should, maybe, handle it next week so that we determine its existence so that when we come to other provisions we do not want to doubt whether we want to take it or not. I think that is by acclamation.

MR. BAGEYA (Kigulu North): Mr. Chairman, I think as far as this particular item is concerned, I am sure Members in this House are ready to dispose of it even now.

THE CHAIRMAN: That is being over optimistic.

MR. BAGEYA: Otherwise, we can start with it next week and do away with it once and for all.

THE CHAIRMAN: Thank you. Can I ask Hon. Atwoma, he seems to have something. Is it a new idea or you want to pursue the same matter?

MR. OKENY TIBERIO (Chua County): Thank you, Mr. Chairman. Mr. Chairman, yesterday when we were before the Drafting Committee I raised a question about the rights of prisoners and I was of the opinion that they are also human beings. But I have turned through papers and I have not seen anything providing for their rights, and the Chairman then told me that he will be speaking with you to find an appropriate place to put it. So, I do not know, as we are now closing on this Chapter of human rights and we have not discussed the fate of the prisoners.

THE CHAIRMAN: I would suggest that you mobilise friends and the Technical Committee and work out an appropriate Amendment which we can consider at the reconsideration stage. It can be at reconsideration stage or even possibly when we come to the prison service, you may find that we put restrictions on the way. So, you could have it ready and we shall then see where it fits, it is not too late yet.

Okay, honourable Delegates, thank you very much for the successful week. I wish you a good weekend and I adjourn the Constituent Assembly, until Monday next week at 8.30 in the morning. Thank you.

*(The Assembly rose and adjourned until Monday
19th September, 1994 at 8.30 a.m.)*