



THE REPUBLIC OF UGANDA

**PROCEEDINGS**  
**OF**  
**THE CONSTITUENT ASSEMBLY**

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**OFFICIAL REPORT**

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Tuesday, 16th May, 1995

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

P R A Y E R S

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

*(The Assembly was called to order)*

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

CHAPTER 17 - LAND AND ENVIRONMENT

Article 276 - MINERALS

**THE DEPUTY CHAIRMAN:** Hon. Delegates, when we adjourned yesterday, we had two Motions on the Floor. One by Hon. Medi Kaggwa and another one by Hon. Leander Komakec and then we have the original stand on Article 278 and Hon. Medi Kaggwa had just read out his amendment and we had two speakers - Hon. Musekura saying that it was not appropriate and Hon. Sebagereka who indicated she was in favour. So, can we proceed from there. Hon. Sebagereka.

**MRS. SEBAGEREKA (Women Mukono):** Thank you Madame Chairperson. I want to put my records clear. I meant to say that if any mineral is discovered on my piece of land and I get bought out on market value, I should be given a certain percentage of the loyalty of the mineral underneath when government is taking control. I was misunderstood, or I misunderstood Hon. Kaggwa's amendment. I want both government and the private land owner to have loyalty of the mineral. I thank you.

**THE CHAIRMAN:** So, you are supporting Hon. Komakec's Motion, not Hon. Kaggwa's?

**MRS. SEBAGEREKA:** Yes, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** But then we were discussing Hon. Kaggwa's Motion which reads as follows:- *'Minerals and mineral ores shall be owned by the owner of the land in which they exist and maybe parliament shall make laws regarding*

*the sharing of loyalties arising from mineral exploitation'*. That is Kaggwa's Motion. Anyway, thank you for your clarification. Yes, Hon. Kajura.

**MR. KAJURA (Bugahya County):** Thank you Madame Chairperson. Minerals are a God made asset. Nobody has contributed in making them. However, some minerals command such a high value in monetary terms that it would be iniquitous to let one individual, or family benefit solely from the value that happens to be found in a particular area. Currently, the policy of the government is that all minerals belong to the government. Now, there is some merit in the point being made today that if minerals are found on the piece of land owned by Mr. X, that he too should benefit. I would also like to add that the respective local administration or District Resistance Council where this is found, should also benefit out of it. I am not referring to things like murrum, clay and so forth. Many local administration do not know that they could even charge some tax. They could levy a tax on these minerals. Normally, they do not but they could. We are referring to precious minerals like gold, petroleum, diamonds for example. Now, these are minerals of high value and I think there is a case for the country benefiting out of these primarily but also letting a certain percentage of what is obtained, go to the District Administration and to the individual. Now, it is not easy to determine a formula because of the values involved. If, for example, today, the people of Kibiro are where we are about to embark on oil exploration, and we were to say that these people will take all the value of oil that will be found, this would run into millions. Now, I think they should be entitled to get something out of it, so should the local administrations of Bwamba, Tooro and Hoima, Masindi but I think the bulk of this value or revenue accruing thereof should go to the central government. I am not talking about loyalty. Now, in many of these agreements which will be made in future, Madame Chairperson, there will always be an article on the protection of the environment which will entail that whoever exploits a particular mineral will have the responsibility of making good whatever he will have upset. This is to ensure that before he leaves the place, he will be required to cover up the holes and all the degradation that would have risen as a consequence. *(Interruption)*

**MR. AWORI (Samia Bugwe North):** Madame Chairperson, I seek clarification from the Hon. Delegate, who at the same time happens to be the Minister responsible for minerals. Could the Hon. Delegate clarify on whether the interest of government is the value of the minerals or the income derived from the minerals? If it is the latter case, Madame Chairperson, there is a law of taxation. The more you earn, the more you are taxed. So, what is the purpose of focusing on the intrinsic value of the minerals when we know very well that at the end of the day, a couple that makes so much out of the minerals from their piece of land shall be taxed accordingly.

**MR. KAJURA:** Chairperson, if there is a hundred shillings, there is surely a difference between when it is taxed and when it is obtained. If you taxed a hundred shillings by 20 per cent, you would remain with only 80 shillings. If, on the other hand, 100 shillings accrues to you, and you give away part of it, say to the Local Administration, you would remain with the bulk. Taxation, therefore, does not always lead to realisation of the bulk of what is realised. So, I do not think the previous Speaker did get my point.

Taxation is one thing and getting revenue is another. Because you get it all. There is a difference between getting it through tax and it accruing to you as it comes. So, I support the proposal before us that parliament in future should work out a formula whereby the government, the owner of the land and I would like to include the District Administration which happens to be in the area where this particular mineral is found, should benefit out of it.

I add the District Administration knowing that although on the one hand they would benefit by people growing food which will feed those who are working in the mines and others getting employment, their areas will also be degraded to some point. Holes will be dug in the area and there will be consequences arising out of that activity. It will only be fair that the local administration should also derive some benefit out of what is realised. Thank you Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Let us hear from Hon. Kabugo who seconded the Motion.

**MR. KABUGO (Nakaseke County):** When I read this clause as it is presented and recommended

by Committee I, it appears to me that the entire property and control of all minerals shall be vested in the government of Uganda. This, I think, clashes with what we have already passed in Clause 1 of Article 271 where we stated that land belongs to the citizens and vests in tenures defined therein. Madame Chairman, if we were to be fair, I would expect that whoever is lucky to have acquired a piece of land where there is a mineral, should be the very person controlling and taking the liens share. Let the government tax him, while at the same time, the miners get whatever they want and then create employment of the people living in and around that area.

Madame Chairperson, only recently, in the early 90s, Bank of Uganda realised that the country was losing too much by way of non-governmental organisations which came in the country and claimed to be rendering charitable organisations or services in Karamoja area, whereas the main purpose was to go and engage themselves in exploiting gold and taking it away without paying any tax or loyalty. The people living there, did not know the value or even if they had known the value, they had no capacity to tax these people and the government of the day looked on.

I remember there was once a minister of this country who also came out opposing the idea of taking monopoly of this because as person born in that area, the mineral that was being exploited there belonged to him and he had a right to sell and dispose of whatever came to his hands. In this case, Madame Chairperson, I suggest that let the government come in, impose or determine the tax. Let the miners who have got the capacity to mine those minerals, dispose them freely without government intervention. I take it that this is the only way that the country is going to benefit, because we have had a number of government interventions into a number of activities which ended into total closure.

We had Nytil, we had Pamba, we had the Sugar factory which almost went into the bush. Let the minerals that we can come across be handled by the owners and I do not think the lawful owners will be in a position to take away the proceeds. They will have to invest it in the country, and I think these people will benefit better than what the government will have earned through it. Let the government stand as a government to give licenses and determine the taxation rate rather than to vest this

valuable mineral into its own hands. It might not even successfully spread revenue accruing thereof to the people supposed to get it, because in the end it will be only people in the top hierarchy to benefit, leaving the local people with nothing. Thank you very much.

**THE DEPUTY CHAIRMAN:** Hon. Higiroy Semajege.

**DR. SEMAJEJE (Lwemiyaga County):** Thank you Madame Chairman. You may realise that a Motion was circulated on the 4th May to be proposed by me and others on this subject matter. I am very pleased to see that a number of people like Hon. Sebareka and Hon. Kajura are actually speaking in support of that Motion, saying that the owner of the land where the mineral is obtained, should have a share. It was circulated some time back. Now, Madame Chairperson, not that this is a principle that appears to be generally acceptable -*(Interruption)*-

**THE DEPUTY CHAIRMAN:** Hon. Semajege, we are discussing Hon. Medi Kaggwa's Motion.

**DR. SEMAJEJE:** Yes, I am coming to it. I just wanted to emphasise my primary proposition which is already circulated and which people seem to be interested in. I support Kaggwa's Motion. I am entirely against the recommendation made by the committee which says that the entire property and control will belong to the government. Madame Chairperson, I think that it would be wrong to say that a person owns a piece of land in perpetuity and that he owns only a few inches of top soil. That is very wrong.

This philosophy of ownership of the sub soil by the natives, is a colonial principle. The colonialists intended that if minerals are obtained in their colonies, the whole benefit goes to their headquarters and not the natives. They looked down upon us. They did not want us to have anything of value and yet in their own places like say Great Britain - that is not true. In their places once you own a piece of land, you go as far deep as possible. If any minerals are discovered there, those minerals will be exploited but the government will earn a lot. In fact, government takes the lion's share through taxes, but the owner has a commendable share too. It is his. There has been some misunderstanding that if we say that minerals belong to the person, that

person will monopolise any mineral found on his land and end up being too rich. No! That is not the case, because we have said that the parliament will be there to set rules.

Secondly, we shall not be the only ones who will have got this kind of opportunity. There are rules everywhere. In fact, government often takes the lion's share through taxation and through licenses and many other ways. So, the land which I own - should I be lucky that there are minerals, that luck should be mine. This should not be taken for a mistake because there are so many other things that we own and we own them as ourselves. Even the talent we have.

Somebody the other day was talking about it, that he is a doctor but he cannot tell me that all his people in his constituency are doctors. That is his talent which God gave him and which he is utilising and you may have a piece of land and you find hundred developed mahogany trees. These trees can give him millions - millions are a lot of money. So, Madame Chairperson, let us not talk about the fact that somebody will get a lot of money. That money will be for Uganda, but the point is we must accept the principle that the ownership is not entirely by the government. The ownership of that land and the minerals underneath should belong to the one that has got the land, but knowing that there will be rules. The parliament will set rules whereby the Central Government and the Local Government will get that money through taxation and other ways like licensing. This is the money which will accrue to the public. So, let us not accept this principle. Let us go by the principle whereby the owner really owns this wealth.

There are even resultant initiatives, like if I know that my land may have minerals from which I will benefit, I will make sure I find prospectors. Once the prospectors find the venture viable, it is then that I would go to government and ask for a license. That is where the government should come in. Madame Chairman, the government will not do all that we should do to exploit the minerals in Uganda. While the government has got the chance in forests, in lakes and wherever we have said that government will control, let the initiatives of an individual who might expect to benefit have that idea and that one will actually serve the whole of Uganda rather than leaving things dormant hoping that Central Government one day will come to my land and

prospect. They may never come at all. If we allow this initiative, then, millions of us will be trying to see if anything profitable can be underneath. I will be serving the country that way. So, let it be known that the principle which the committee has set does not hold.

I support Hon. Kagwa's amendment because once we have that amendment accepted, then even my amendment which says that the owner together with government will have been achieved. The principle should be that the minerals on the land you own, should be yours. Then, the government comes in and you share. You have a right to have a piece. Whether it is 1 per cent, whether it is .0 percent but let the ownership be there. Lastly, Madame Chairperson, after the minerals have been mined, sometimes the minerals can be there for just three, four, five years but the land is yours in perpetuity. So, this land will come back to you together with whatever has been built. That will be yours. So, that is why that ownership should be all yours, although you are not going to take the lion's share. Both the local and central governments will take the lion's share. But you whether you earn 1 per cent or less, the mineral should be yours. I beg to support the amendment. Thank you very much.

**THE DEPUTY CHAIRMAN:** Hon. Elyau.

**MR. ELYAU (Kalaki County):** Thank you Madame Chairperson. Although, I sympathise with the Mover of the Motion, we found difficulties Madame Chairman, about this land. Say, minerals on the ground with the kind of land tenure we have, pieces of land, how is somebody going to control geographical factors like the River Nile which is floating? Who can control it? It is moving per minute. Now, down there, that is why we were suggesting government should come in. It is very difficult to have boundaries when the minerals are down because the piece of land on top of that very mineral, will have been a lot of land with a lot of people. I want clarification from the people moving the motion, on how they will ensure that his mineral ends at a particular point, and another person takes on from there. That is the problem. *(Applause)* So, we are discussing as if we see the future, we do not want to get problems below there, since we are not the only people interested in mines. I think, Madame Chairperson, that when the government extracts these minerals it comes back to people. I am aware that the government is a bad

business person but in future we might get Ugandans who are very capable who will be able to operate and extract this for the benefit of all. Supposing the mines of gold are in Karamoja and we in Kalaki do not have it, do you think we would not enjoy the Kalaki mines? Nobody should monopolise it just because he stays on top of the land. We want government to extract every possible riches for the benefit of all. For example, when attacked in this country Uganda, it does not matter whether one is a Mucholi or a Muteso; we all must be defended. So, government must have resources primarily on the people and even land. Although we have been given land in Section 271 we still cannot do away with government. That is why we primarily feel that government should have been able to ensure that the mining business is properly controlled, to ensure that it is for the benefit of all. We did not actually lose sight of ownership of land from the top upto underneath, only that as far as I know, in future you will find that there is going to be a problem if we allow ownership. Can someone now advise me on how such boundaries will be made? How will he make land titles even for the ground below, to cater for minerals? I doubt its possibility. With that, I oppose that Motion, in favour of the Committee's Report. I thank you.

**THE DEPUTY CHAIRMAN:** Hon. Kiyonga.

**DR. KIYONGA (Bukouzo West):** Thank you very much Madame Chairperson. I also support the argument that in considering this matter of minerals, three elements should be considered; the individual who owns the land, the local authorities and these may stretch from sub counties upto the district or municipality and the national authority. That would be one factor I would be interested in to make sure that all those elements are considered. But having done that, we have to take account of what Hon. Elyau has said, that there are nationals in the country and we have responsibility as leaders to develop everybody using national resources. So, although, there is this individual and there are local authorities, it is important that the national authority does get access to this national wealth.

It is also important, as Hon. Elyau said, to look deeply into the future as a way of protecting the country. If we had a situation where we say the individual is going to own all the minerals, irrespective of the depth where these minerals are, we can have a situation where information which we do not

have as Ugandans, but which the former colonialists may have; like they may know that there is oil in a certain place we do not know, then, they discover that we have made a law to say that Hon. Elyau owns 5 miles of the endowed strip of land. They can go straight and deceive Elyau and take away this oil to the disadvantage of the rest of the country. Involving the national authorities, therefore, in the mineral is going to assist protect Ugandans from a man coming from outside, going straight to Elyau and exploiting our resource without reference to the national authority.

We also have to note that minerals are not a uniform thing. You have a situation like salt, you have salt in Katwe - just in one subscribed place- but you have oil as we suspect maybe in Bunyoro but we do not know how wide it stretches. Is it from Bunyoro upto Buganda? Is it from Bunyoro upto Lango area? That is another type of mineral. You have lime which may not be as extensive as the oil itself but also covering a wide area and it would appear that in making a formulation, one would have to take into account the type of mineral we are talking about and how extensive it is likely to be underground.

Having said that, Madame Chairperson, in order to strengthen the point about the individual or individuals community being involved, I would cite a situation in Kasese where the Europeans discovered copper and because they knew the value of copper, they spent so much money to build a railway from Mombasa upto Kasese just to get that copper nothing else. But 50 years plus, you have a situation where the peasants who sat on that land are much worse off than they were, but the railway has been paid for and the Europeans gone. We must fundamentally cure this situation in this constitution. Madame Chairperson, I will take information if you will allow Hon. Ngobi or anybody else who would wish to give me information.

**THE DEPUTY CHAIRMAN:** Hon. Ngobi.

**MR. NGOBI:** Thank you Madame Chairperson and I am very grateful to Hon. Kiyonga for giving way. Whilst I agree with most of what he is saying, I want to inform him and the Hon. House that the railway from Mombasa to Kampala was originally built for coffee and cotton. It is only after the copper was discovered, that the railway was extended from Kampala to Kasese. The railway was not built for copper from Mombasa to Kasese. That is the fact I wanted to correct.

**DR. KIYONGA:** I thank Hon. Ngobi for the very useful information he has given Madame Chairperson, but really it does not remove the fact. The point I am giving here is that you had a community sitting on a piece of land and it was discovered that below that piece there was a useful commodity in the name of copper, and heavy investment was made to go and exploit that copper to the disadvantage of these individuals. Now whether the railway came specifically for Kasese or upto Kampala first is secondary, but the historical fact is that people were not taken into account in exploiting a resource on which they were sitting.

Madame Chairperson, I wish the Motion by Hon. Kaggwa had been confined to writing, because the problem we are discussing is very fundamental and it would appear to me that we cannot solve it in one step. According to me, we would lay the principle that when minerals are discovered and they are being exploited all these three elements must be considered. The individual, the local authorities and the national authority. *(Applause)* For the reason of making sure the individual gets something, the local authorities get something, not forgetting the national authority who are looking after more people. It would also protect that national authority from a perspective that the individual cannot manage. It is important that this individual and the government get involved. I think that this Hon. House can only fix the principle and leave the nitty-gritty of the matter to the future parliament to describe how each type of mineral is going to be handled. I, therefore, find a problem supporting the Motion by Hon. Kaggwa which presupposes that we can solve the problem here and now. I prefer a formulation that is more general and lays a foundation for parliament to ultimately solve this problem.

**THE DEPUTY CHAIRMAN:** Hon. Tibamanya.

**MR. TIBAMANYA (Kashari County):** Thank you Madame Chairperson. I seek clarification from the Movers of this Motion. In the first place, the present law as per recommendation by the Committee, has not prevented anybody say in Buhweju from mining his gold where government is not interested. All it has been doing is - that if you want to start mining get a license from the government so that government does not take away your gold as soon as you have mined it. I thought that the Committee's recommendation meant that if you do want to mine some mineral, you would have to apply to government - *(Interruption)*

**THE DEPUTY CHAIRMAN:** There is a point over Hon. Tibamanya. Is it a point of Order?

**HON. OKULLO:** It could be order or procedure Madame Chairperson. It appears to me that most of us do not have the text of the Motion we are debating and in view of the remarks made by Hon. Dr. Kiyonga, that a better formulation be worked out, could we kindly get the text of the Motion we are debating so that we really know the full implication of this Motion. I thank you.

**THE DEPUTY CHAIRMAN:** Actually, I read this out when we were beginning. Perhaps you came late but I can read it again. Before we left we had three scenarios. One, by the Committee which says; *The entire property in the control of all minerals and mineral ores in or upon any land or water in any land shall be vested in the Government of Uganda.* I hope Hon. Okullo-Epak you are listening. You told me to read out the motion, but then you are not attentive. I repeat this on your behalf. I was saying that we have three scenarios; one is as stated in the report.

Then we had Hon. Komakec who had his Motion tabled and was on paper. Then Hon. Kaggwa came in and said that his departs furthest and Hon. Kaggwa's reads as follows: a) *Minerals and mineral ores shall be owned by the owner of the land in which they exist and b) Parliament shall make law regarding the sharing of royalties arising from mineral exploitation.* That is Kaggwa seconded by Ssenteza Kajubi and Misusera Kabugo. Then, the second amendment nearer to the one in the Committee report. It was circulated and it reads thus: *Minerals and mineral ores shall be owned jointly by the land owner and the government and 2) Parliament shall make laws a) to regulate the exploitation of minerals and b) the sharing of royalties arising from mineral exploitation.* That one was moved by Leander Komakec, Matthias Ngobi and Sebaana Kizito. So, we are debating the one which departs furthest and that is Kaggwa who says minerals should be owned by the individual. The extreme end is government must be alone. So, let us get Kaggwa's Motion out of the way, then we go on to Leander's, before we can go back to the text. Hon. Urban Tibamanya, complete your contribution.

**MR. TIBAMANYA:** Madame Chairperson, I said that as long as the position the committee took and the position as it is today, does not deprive one of going and mining and selling the gold, does not provide for government confiscating the gold once you have mined it, then I will support that position. I am unable to agree with the Movers of the Motion, since there is no fear that government will go all along to confiscate what you have got under license.

Secondly, Madame Chairperson, as someone has already said, there is oil in the western part of the country and you will have one hole some where in the center that can sack the oil from as far as maybe ten miles from that drilling point. Now, it will be difficult to say you know, the land of Mr. So and so stops here, so this oil is ours. To iron that one out, I think the minerals should belong to government and the government is part of us and it shall be used for the benefit of the people. I thank you.

**THE DEPUTY CHAIRMAN:** Hon. Ambrose Atwoki.

**MR. ATWOOKI (Youth - Northern):** Madame Chairperson, I am not impressed by the kind of reasoning some of the Members on this issue. I think we should endeavour to think as nationalists rather than tribalists. There is no way you can entrench the right of ownership of minerals and ores into an individual. It is important to note that all the resources that are on land especially minerals and ores, do not really belong directly to the individual. I believe that it would have been better to advocate for an ownership which would allow maybe the local authority to hold the minerals and ores in trust for other members of the society. So, I would advocate for a situation where the national authority or the central government and the local authority agree on the means and ways to share the minerals and ores which are found in certain localities. The local authority will be acting in the interest of the peasants in that locality, meanwhile the central government will be acting in national interest. I believe this one will also ensure that in case it comes to exploitation and mining of such minerals, there will be a standardised approach which will take into account the impact on the environment which an individual might not see as very important since he or she has the vested interest in the outcome of the mining.

Madame Chairperson, to have the national authority or the central government having a stake in the exploitation and mining of the minerals will also ensure that proper mechanisms to plan how to exploit such minerals are also taken into account and they will be doing this one in consultation with the local authorities. I am, therefore, totally opposed to the idea of vesting the ownership of minerals in an individual. I prefer that it is vested in a local authority and also in the central government which will act in trust on behalf of the citizens. Thank you Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Katenta Apuuli.

**MR. KATENTA APUULI (CPD delegate):** Madame Chairperson, I thank you. Hon. Elyau raised a very important issue with regard to this debate which is before us. That is how do you determine boundaries below this earth? And how do we demarcate whose territory these minerals are coming from? In the case of minerals that are fluid like hydro carbons, if you determined that the land on which I am sitting, my ten acres and you sink a well and started drawing hydro carbons, how do you determine which are mine and which belong to the nation because these hydro carbons will be flowing maybe from the vicinity of one mile 2 around my land. The complexity of this kind of thing is why natural heritages like minerals should belong to all the people. The idea of permanent settlements is new to us. Many of us have not been on the same pieces of land for over 100 years.

What I would appreciate that Members should claim is any minerals that can be quarried - quarry means you mine on the surface but any sub surface or deep mining - all those minerals should be a heritage of all the people. I do not subscribe to the individual owning deep mining minerals because I do not believe that those minerals could, in any way, belong to that particular individual because you happen to own a piece of the earth on the surface. These minerals do not, of necessity grow in a vertical direction below your land. The minerals will digress and diverge well beyond your boundaries and since we are not able, we as a nation are not able to determine by x-ray below your land that some of these minerals cannot belong to you. I cannot support the Motion that minerals that are deeply mined should belong to the individual. We are one country under God. We are one country

who share a common heritage. We also respect each individual's rights but I really could not see how a House like this of very intelligent, Hon. Delegates like you could determine that minerals that are deeply mined below the earth could belong to an individual.

I have not heard anybody scientifically justify that the minerals can belong to him. Hon. Urban Tibaniyanya said - they are mining in Buhweju. I agree with him because the kind of mining that is going on in Nyabushozi is panning. They scratch the top of the earth and take the gold away. That gold should belong to the person who owns the garden. I agree with him in the same way as I agree that you can go and mine clay, you can mine lime, you can mine whatever is available close to the surface; but Hon. Delegates, I would like to appeal to you in all honesty that for fairness for all the people of Uganda, let all deep mined minerals belong as a common heritage to all of us, because it is not possible for us to determine the boundaries deep in the center of the earth. I thank you Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, let us do it this way. We have really gone round. He has been against. I want one for. Hon. Wasswa Lule. Because it is either yes or no. So, let us balance the scale.

**MR. WASSWA LULE (Rubaga North):** Thank you very much Madame Chairperson. I am perturbed by Hon. Katenta's submission. How do you tell the demarcations. The way you tell the demarcations is the same way you tell the demarcations between Uganda and Zaire. So, there must be some way of settling those disputes. Those things can be legislated for. Now, this owning of minerals, I support the individual owning minerals. This is the essence of the mailo land system.

Some people have been saying that mailo land owners used to say that I have sold you the land but what is below is mine. That is the substance of it. It is the minerals. It is nothing unusual. There is no reason whatsoever why government should own minerals like anything else. It does not have a monopoly of expertise of miners. I, as an individual, have the capacity to contract out with these mining companies. I have the capacity to enter into a contract, so, there is nothing that is unusual. We only give governments monopoly for a few people

to sit in the center and then to misuse on behalf of the majority.

Now, I will take you back. This owning of minerals is not a new thing. Our forefathers in their wisdom as far back as 1900 and I will read from the 1900 Agreement as to what they reached between themselves and the colonialists of the day. In the 1900 Agreement it says *'As regards mineral rights, the rights to all minerals found on private estates shall be considered to belong only to the owners of those estates subject to a 10 per cent duty which will be paid to Uganda administration when the minerals are worked, on the land out side private estates, the mineral rights shall belong to the Uganda Administration which, however, in return for using or disposing of the same, must compensate the occupier of the soil for the disturbance of growing crops or buildings and will be held liable to a lot to him from out of the spare lands in the protectorate an equal area of soil to that from which he has been removed. On these waste and uncultivated lands of the protectorate, the mineral rights shall be vested in Her Majesty's Government as represented by the Uganda administration.'*

In a like manner, it goes on to the forests. Now, if our fore fathers had that wisdom, who am I today to question that native wisdom. I support the right to own minerals and the mining Act as my friend rightly points out, that the entire property in and control of all minerals and mineral ores in, under or upon any lands or waters in the protectorate are and shall be vested in the governor in trust *-(Interruption)*

**THE DEPUTY CHAIRMAN:** Hon. Lule, Mr. Chango wants some clarification.

**MR. CHANGO MACHYO (Saiasia Bugwe South)** Madame Chairperson, is the Hon. really telling us the truth when he says that our fore fathers had that insight. Was that agreement not written by the British and made the Baganda to sign it.

**MR. WASSWA LULE:** I do not know how I can answer Hon. Chango Macho. The Agreement is here. It is signed by both the British and the Africans. The circumstances of the day, I was not there. I will not testify to that but the point is that the Agreement was written in favour of the land owner and not in favour of the British.

Now, the other issue I would like to raise on this amendment is the question of loyalties. The income arising from mining is subject to taxation like all income. I really see no reason why in addition to income tax, one should now have to pay loyalties. I believe that the issue of loyalties, if the Mover of the Motion would bear with me, be dropped and let the owner of the land enjoy the full benefits of his asset and pay taxation to the central authority. Madame Chairman, with those few words, I beg to support the Motion.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, we have quite a long way. Let us see what we have. Whether we agree with Hon. Kaggwa or not. I think we have had a good chunk of discussion, for and against. Yes, what is the problem, Hon. Kajubi?

**PROF. KAJUBI (Kyadondo North):** Thank you Madame Chairperson.

As you will notice, Hon. Medi Kaggwa is not here and he asked me to convey to you his apologies and also asked me to stand in to answer the queries which have been raised to him. I would, therefore, plead your indulgence to allow me to reply to some of the issues which Hon. Medi Kaggwa is not here to reply to.

**THE DEPUTY CHAIRMAN:** Okay. Then after you we shall vote.

**PROF. KAJUBI:** Thank you very much Madame. Madame Chairperson, a number of delegates have made statements trying to support and others trying to oppose this amendment. I would like to, first of all, point out that in Article 271, we decided that land and not soil belongs to the citizens of Uganda and is vested in them in accordance with the land tenure systems entrenched in this constitution. Madame Chairperson, I would like to put emphasis on the word *Land*. To some people the word *land* seems to be interchangeable with soil but to me land is much more fundamental than just soil. It is not the surface. Land is land. It encompasses all the area both on the surface and below on which property is situated. Madame Chairperson, statements have been made that we cannot determine the boundaries between the minerals of one person and another. I say *(Interruption)*

**THE DEPUTY CHAIRMAN:** Information from Hon. Okullo-Epak.

**MR. OKULLO-EPAK:** Point of Information. Madame Chairperson, I would like to inform Hon. Prof. Kajubi that the question of boundary if we use it as an argument here to dispossess a land owner of the right over the mineral which has been located through the surface of his land would even work against the whole concept of any country claiming ownership over minerals, because it is impossible to determine whether an oil sink in Uganda is not flowing from Sudan through to Zaire. So, that argument would defeat even the national ownership and right over minerals in the country. I beg to inform him so.

**PROF. KAJUBI:** Madame Chairperson (*Interruption*)

**THE DEPUTY CHAIRMAN:** Okay, let us get information from the neighbour. Hon. Kajura.

**MR. KAJURA (Bugahya):** Thank you Madame Chairperson. Oil does not flow from one region to another. Hydro carbons have a different form. So, you cannot say that it is flowing from one area to another. Hydro carbons come from sedimentary rocks - they metamorphose and produce hydro carbons. So, let us not think of oil flowing. It is possible Madame Chairperson, to establish between two say countries - let us take L. Muttanzige or Lake Albert. We share it with Zaire. It is possible while extracting the crude through a process of unitisation, to know how much is coming from one side of the lake and coming from the other side of the lake but this process is limited to about two separate owners. You cannot do it with five or with ten owners. It is possible to use this system of unitisation to establish the amount of crude from the Zaire side and the amount from the Uganda side. Thank you.

**PROF. KAJUBI:** Madame Chairperson, I would like to thank my neighbour here for that information. So, I think that information puts Hon. Elyau and Hon. Katenta Apuuli who said that we cannot determine boundaries, at rest. Hon. Kiyonga made the point that a railway was made to exploit copper from Kasese but the people were left much poorer than they were before. Definitely if that copper had belonged to them, the individuals and not the government, I am sure the situation would be different. So, they would have possibly gained much more from the minerals of the area than they did. Madame Chairperson, arguments have been made - (*Interruption*)

**THE DEPUTY CHAIRMAN:** Hon. Kajubi, it seems Hon. Tinyefunza has some information for you.

**MAJ. GEN. TINYEFUZA:** Madame Chairperson, mine is procedure, it is not information, therefore, you cannot advise me on procedure, Hon. Kajubi. Madame Chairperson, the procedure I am seeking actually is guidance from you, because I do not know whether we are on the right track. When I looked at Article 24 which has already been passed actually under the heading of 'Sovereignty over natural resources', we did vest these natural resources in the people and not in Government. Under Article 24 we only allowed Government to protect those natural resources. Now, here are people coming up with another thing saying, we can reverse that. So, I do not know under our rules of procedure whether it is procedurally correct to again contradict an already past provision.

Madam Chairman, it reads; '*The State shall protect important natural resources including land, water, minerals, oil and forest on behalf of the people and those resources shall be managed and utilised for the development and welfare of the people of Uganda.*' Now, to me this brings in the element of taxation, but not ownership. I think the ownership was clearly settled and that is why we substituted protect instead of control. Therefore, Madam Chairman, I think it would be out of order to try to revisit or even to contradict this Provision. I need your guidance Madam Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Tinyefunza, you are already saying that they refer to the people and the Government is to protect. The Motion on the Floor is talking about owner. It should have been persons or individuals. But if you say, the people, it means everybody. In which case this would not arise. So, I do not see any contradiction.

**MR. SENTEZA KAJUBI:** Madam Chairman, a point has been made that minerals are so valuable that they cannot be left to the position of individuals. Madam Chairman, I think that reason is faulty. His Excellency, our President, has decried or lamented the absence of an African middle class in this country. Therefore, in many cases he has ascribed our backwardness to the lack of this middle class; people who have got some money in their hands, who would then prime the pump of economic development. Why is it that we do not have a substantial middle class in Uganda? This is

because the Colonial Policy was such that the economy was to be in the hands of only peasant producers. They told us that you are a protectorate; that the production is in the hands of small producers; you produce cotton and coffee and so on and so forth. You are not like Kenya where there are people with big plantations and farms.

When it came to marketing the cotton and coffee, this was in the hands of Asians originally, but later in the hands of Marketing Boards which also exploited the peasant grower even much more than the Asian had done. As a result, we did not create a dynamic middle class. We have been ruled by people in the past who did not have a single penny in Uganda except the Dollars they had in their briefcases. If there was trouble they took a plane and went away and had nothing absolutely in Uganda. So, Madam Chairman, this has been a plight of this country. Now, what is wrong with a person who is a peasant today, becoming a multi-millionaire tomorrow, because gold has been found on his or her land.

People have been pleading here for the peasants how exploited they are, and now when it comes to the possibility of a peasant acquiring property from where he happens to be, then this is too much money in the pocket of this particular individual. Madam Chairman, there was a time when it was felt that all the Dollars in the country must belong to the Government. If you were found with 50 dollars in your house, this was an offence. Now, wisdom has come to prevail. The Government has discovered that this is not the way to develop the economy. The only wealth that the Government can have is the wealth which it allows its people to generate. The Government which says that if it is too much, they will grab it, then that Government cannot work for the benefit of its people.

Madam Chairman, I am not against the profits being shared *-(interruption)*

**MRS. BWAMBALE:** Madam Chairman, I am seeking clarification from Hon. Senteza Kajubi on what he means by the 'owner of the land'. Is he talking about one owner or several owners of the land where the mineral is located? When he talks about the owner or owners of the land, is he considering only an individual or even land that may be owned by the local authority and that land happens to have minerals or mineral ores below?

Is he referring to some mineral or mineral ore that happens to be located below land that has been acquired by Central Government?

Finally, when he talks about owner of the minerals, is he reversing the status whereby by now Government may happen to own a project like Kilembe Mines which is already covering that mineral? I want to be clarified.

**PROF. SENTEZA KAJUBI:** Madam Chairman, I would like to thank Hon. Bwambale for raising that particular question, because it goes a long way towards supporting this Amendment.

The word owner, I do not think there is dispute about it. When we talk about owner, in some cases this owner, might be multiple. For example, where the land is owned by a clan where we have said that customary land ownership would be there. If you go to Karamoja for example, these minerals might be found in land owned by a clan of Karamoja. I think that clan is the owner of that land and they should take advantage of the fact that God has blessed them with that wealth. I do not want Government to come in and grab that wealth and say it is too much for this clan to gain that land.

Where the miner has gone deep and then gone horizontally we have already explained and I think my neighbour here explained that the boundaries can be very easily established. If you have gone on top of Mount Rwenzori, and then come down to the land occupied by the people of Kasese, the people of Kasese are saying the owners of that land, should take advantage of those minerals. We are not opposed to the sharing of profits between the Central Government, the legitimate owner of the land and also the local government. The Revenue is derived by taxation and I am glad that the Mover of this Motion knows a lot about Revenue. He did not do it in ignorance.

Madam Chairman, in conclusion, I would like to thank all those who have contributed to this Motion. The purpose of it is, that we have given the land to the people to whom it belongs, and that is the citizens of this country. The English have got a saying, you cannot have your cake and eat it or you cannot eat your cake and have it. The land belongs to the citizens or the individuals, and therefore, everything which is therein belongs to the individual, although the individual can share this with the rest of the nation through taxation. Madam Chairman, I beg to move.

**THE DEPUTY CHAIRMAN:** I now put the question that minerals and mineral ores shall be owned by the owner of the land in which they exist.

*(Question put and negatived)*

**THE DEPUTY CHAIRMAN:** I have another Motion by Hons. Semajje, Epak, Ndege and Hon. Sekandi, which reads, '*Parliament shall, by Law, prescribe the manner in which the Central Government, a local government and a land owner of any area where minerals are exploited shall share the realities accruing from such exploitation*'. So, how does that differ from the other?

**MR. LEANDER:** Madam Chairman, that one, although I did not write it down fully, I think it is just the wording. In fact I would like to read mine and then see whether they can agree with each other. '*Mineral and Mineral Ore shall be exploited*', one is a statement of the principle and the other one is a directive of what the Government shall do. But I think mine was slightly better in a sense that it established the principle that minerals and mineral ores shall be exploited, taking into account the interest of the individual land owners local authorities and the Central Government.

**THE DEPUTY CHAIRMAN:** But the one I have does not read like this. The Amendment I have is '*minerals and mineral ores shall be owned jointly by the land owner and by the Government*'.

**MR. LEANDER:** Madam Chairman, you see we have been doing consultations since yesterday. We have actually amended that one. So, the first part is to state the principle that minerals and mineral ores shall be exploited taking into account, interest of the individual land owners, local community owners and the Central Government.

**DR. SEMAJJE:** Madam Chairman, the principle is one. As long as we do it knowing that the Committee's Proposal one is not going to appear, then I accept to go along with the improvement. I thank you Madam Chairperson.

**THE DEPUTY CHAIRMAN:** Now, we are trying to delete 278 as it appears in the Report and substitute it with a new amendment by Hon. Komakec in agreement with Hon. Semajje.

**MR. MASIKA:** I am not clear about this Motion, Madam Chairman. It seems not to state the issue of ownership, and it is cutting it by simply talking about exploitation. Could the Mover of the Motion clarify who owns the minerals.

**MR. KOMAKEC:** That is quite true, we are really talking about how minerals would be exploited and benefits shared out because I think the point of ownership has been taken care of by what we said in Article 24 and 172 Clause 3. I think those areas have covered the ownership question. So in this one, we are really interested in how minerals will be exploited and for whose benefit.

**MR. MASIKA:** Thank you Madam Chairperson. Unfortunately, I do not have my glasses with me to read. Could the Hon. mover of the motion remind us what these articles 24 and 172 are saying about ownership?

**MR. NGOBI:** Thank you very much Madam Chairperson. Article 24 was originally drafted as follows: The State shall control important natural resources including land, water, minerals, oil, forests and so on. In the plenary here, it was decided to delete the word control and insert therefore the word protect because we said that the ownership is there but government will protect. That is what it said. Then in article 271, we said that land ownership is vested in the citizens of Uganda and therefore, also settled the question of ownership of land because land does not mean the soil of two inches or two feet. It is that land in a conical form. I

if you go to simple geography, you take the land and go down to the centre of the earth. But although you go that far, some of it is theoretical but that is what land is. Land does not mean the top soil. It means land, that mass and therefore, that question again of ownership was settled. So now, what we are concerned is that since some of what is contained or may be contained in the land are important minerals valuable, these minerals we are saying they will be handled in this particular order. When they are handled, they will take into account the interests of the land owner, the local government and the central government in order to diffuse the fear that the individual by himself or individuals by themselves will take too much without taking into account the interests of others. I hope that explanation gives what is wanted. Thank you.

**MISS BYANYIMA:** Thank you Madam Chairperson. Madam Chairperson, I would like to support the new formulation. I support it because when I read it in conjunction with article 24 which protects natural resources on behalf of the people. My understanding of both is that minerals and mineral ores belong to the person who owns the land on which those minerals are and to his community.

**MR. ABUMAYANJA:** Point of order. I thank you very much Madam Chairperson. The order is that in view of the importance of the matter being discussed, would it not be in order for delegates to be availed the text of the motion being debated? Because the original motion of Hon. Leander Komakec was different.

**THE DEPUTY CHAIRMAN:** Okay, let me read it to you. *Minerals and mineral ores shall be exploited taking into account the interests of individual land owners, local authorities and central government. Two, Parliament shall make law to (a) regulate the exploitation of minerals and (b) the sharing of benefits arising from mineral exploitation.* That is what we are debating.

**MISS BYANYIMA:** Thank you Madam Chairperson. As I said, I support this motion and I think it is fair that minerals under the ground belong or at least the benefits accrue to as many people as possible in the country. And then it is not for us here to determine how the benefits accrued are going to be shared between these three groups of people. This is for Parliament and this is provided for in the second clause of the same article.

I do not agree with those who would like to see minerals belonging to the land owner only. This is not just selfish but it is also not technical, because it is very difficult to determine just under whose ground these minerals are. When you drill oil, you drill oil from a layer. This layer can even stretch from across one border to another. It is not possible to determine the individual owner of the oil as such but it is easier to determine the area where many owners are. So it is not even technical to try to determine individual owners of minerals under the ground. It is more accurate to determine an area where minerals are, a large area rather than a tiny area. Madam Chairperson, this amendment also makes it possible to speculate and to exploit. If we had the previous amendment, it would be very

difficult to find any investor who is going to put down money to determine whether there are exploitable resources, whether they are commercially exploitable. All these levels of determination become very difficult, if you do not establish that there is an interest for the broader community.

When it breaks down to individual level it becomes very difficult to negotiate with all these private individuals the rights to go down and establish the quantities and the commercially exploitable quantities as well. So Madam Chairperson, I support this motion and I urge my Colleagues to support it as well, for reasons of justice and for reasons of clear logic. Thank you Madam Chairperson.

**DR. OKULLO EPAK:** Madam Chairperson, before I make my substantive contribution to this motion, I wish to beg the movers to accept the following additional two points. I wish them to accept an addition to the clause which says Parliament shall make laws and there should be part (c) governing the conditions of indemnities. I shall explain this later on. Indemnities that means the area to which claims or damages arising from exploitation could cover.

I will give an example that the indemnity clause for the Kilembe Mines covered only the immediate area surrounding the mining area, and ignored the fact that the copper was going to be smelted in Jinja and the effect of the sulphur dioxide gases affected the Jinja area drastically yet that Jinja area was never covered in the indemnity clauses governing the Kilembe Mines. So depending on the nature of minerals which will be exploited in future, I think the conditions governing indemnities should be very clearly specified Madam Chairperson particularly with regard to the environmental effect which they may cause.

I would also beg them to allow me to introduce an amendment which includes conditions for the restoration of the relic lands. Madam Chairperson, exploitation of minerals affects the original conditions of land seriously. Pits are left, dams are left, even rigs which are used in mining are abandoned on the sites and usually the companies that exploit these things simply walk away after the minerals are exhausted. The situation in the United States is pathetic Madam Chairperson. The situation in Kasese area would also be terribly pathetic except that those dams are still due for development. So I

would beg them before I make my substantive contribution to accept these additional points. So maybe I would pose here Madam Chairperson, and hear from the movers of the motion whether those additions are acceptable, then I can come and contribute to the debate Madam Chairperson.

**THE DEPUTY CHAIRMAN:** Okay, before we go to that, we also have article 279 specifically on environmental protection. Shouldn't that one go there?

**DR. OKULLO EPAK:** No, this is really specific to minerals, ores, their exploitation, explorations and so on and so forth. Of course those ones are stating principles. These are talking about effects and the remedy to the effects of minerals and I think we are really concerned here about the outcome of mineral exploitation. The outcomes are economic and are also of environmental import, which I think we could include in this article to direct the attention of future Parliament to these issues specifically. I believe they could be covered in the environmental laws, but why not specifically include them under this mineral aspect Madam Chairperson?

**MR. LEANDER KOMAKEC:** Yes, I got (c) governing the condition of indemnities but I did not get the (d) quite well. I think I can accept (c) on behalf of the movers, that it does no harm. But I think the point Dr. Okullo Epak is emphasizing here, is in clause one where I said that the interests of the community are as well taken care of. This one, we cannot specify all of them in a basic law like this. That is why we said Parliament shall pass these laws, but as a reminder, it does no harm. I have not got (d) very well, they say it is a condition but I did not put it down, I did not quite get it. But on the whole, the principle, is that the worries that Dr. Okullo Epak is talking about come under interests which will be environmental health, and economic status of the people concerned because interest is quite wide. But I do not mind putting it here to remind Parliament that while they are making the law, they should take this into account. So I actually accept in principle any condition which is pertinent, but we must guard against overloading the constitution by trying to detail it too much. Thank you Madam Chairperson.

**THE DEPUTY CHAIRMAN:** Okay, Hon. Okullo Epak, can you have (d) clearly stated?

**DR. OKULLO EPAK:** (d) states conditions regarding restoration, of the relic lands. That is all.

**MR. CHEBET MAIKUT:** Madam Chairperson, while I agree in principle with the contribution put forward by Hon. Dr. Okullo Epak, I think as you pointed it out earlier, that fear can best be catered for on a provision that deals with protection of the environment in article 279. In my view, the question of protection of the environment is a wide aspect which will have to encompass a broader spectrum. In other words, we cannot under the minerals part of it put all the details that will endeavour to try and cover the relic lands, while the minerals have already been exported. So if Hon. Dr. Okullo Epak could accept, I think his provision can best be included under the provision on protection of the environment, because we are not going to put every detail on every aspect because we have said that the environment is quite important. It is central on all our human activities. I think it will be good for it to be put specifically on that other provision. Thank you very much.

**MR. DEO RWABITA:** Thank you very much Madam Chairperson. Madam Chairperson, I appreciate the concern of the movers of this motion about the individuals as part and parcel of the beneficiaries of the minerals. Madam Chairperson, I am a Member of committee one. We did not include all aspects, because we looked at minerals as rare natural gifts from the creator. Minerals are very rare as you may appreciate. Okay there are areas where you get gold, there are areas where you get iron and so forth.

Now we have got marble in Karamoja but these are very rare and until you explore them, you might not know where they are anyway. Now being rare, the committee found out it will be difficult to give a special consideration to individuals who exploit these minerals for their own benefits. The minerals being rare, should benefit the whole nation or the people of Uganda. That was consideration number one. Consideration number two Madam Chairperson, was that if needs be, the individual on whose land we find minerals could get a proper or adequate compensation. Therefore his interest would be taken care of.

We also found out that individuals as such may not have and indeed they do not have the capacity to exploit these very precious and important minerals

or oils wherever they will be in their location or in their private land. For example, when you talk of gold and oil and even iron ore, for an individual to exploit such important minerals economically is next to impossible. Therefore, however, we like the owner of that land to be the beneficiary of these natural resources, we must also put into consideration the common good.

Now instead of having one individual sitting over a mine of gold or oil, government should do its level best to exploit this mineral for the common good of the whole country, not just leaving it or under the pretext of protecting the ownership of somebody's land or protect his human right of having a right to that land. I think there are two issues. There is the individual as an owner of a piece of land but that individual also lives in a community and that community should also be a beneficiary to natural resources, that can give development to all the areas in Uganda. But when we specify that it must be the owner of the land to benefit from it and perhaps to be a partner to it, I think we are going too far into explaining the importance of ownership of that piece of land, Madam Chairperson.

**MRS. SEBAGEREKA:** Point of order. Madam Chairperson, is it in order for the Hon. Member to take us back, because we finished with that motion? We are on the other motion now that you have just read.

**THE DEPUTY CHAIRMAN:** Hon. Rwabiita, let me read it for you. It is, *'exploit taking into account the interests of individual land owners, local authorities and central government'*. So what you are arguing actually is what is in the amendment.

**MR. RWABIITA:** Yes, but what I am saying, before you conclude on the motion by Komakec, what I am trying to illustrate is that the individuals are being catered for in clause two and when the local government and central government come in, we are talking of sharing realities, that is why even the local government can think about the individual to give him part of those realities. But when you say that you delete the whole of the clause of 276(1) and insert all the others you have put in here, I am explaining Madam Chairperson, that I think we are missing the point of the common good rather than trying to stress the importance of ownership at an individual basis.

**MR. BAGEYA:** Madam Chairperson, I want the previous speaker to clarify on this sub-clause 2. What we have done is referring to the committee's sub-clause 2. What was lacking in sub-clause 2 was the owner. I want him to tell us whether he is against the owner of the land being party to the profits out of this exploitation of the minerals.

**MR. RWABIITA:** Madam Chairperson, I did not say that exactly. The owner of that land will be considered when the local authorities discuss with central government how to share the royalties accruing from that extraction of the minerals. But it is not necessary to put it in the constitution that the owner becomes part and parcel of that sharing. It should be considered under the local authority. The local authority in that area, when they discuss with central government, then in their discussion they could say okay, if we are going to distribute these royalties, we must also consider the local people in those areas where we are going to mine these minerals.

**MR. MBURA MUHINDO:** Thank you Madam Chairperson. Madam Chairperson, the individuals who are living in areas where minerals are being exploited are the real sufferers. Why do I say this? I have very, very practical experience because I am born in a mining area, Kilembe Mines. That is where my home is and in fact our homes are on top of those tunnels of the mines and if anything happens, we are lucky that this earthquake which has been coming has been by-passing us otherwise we are very, very obvious victims of land crux if it ever happens. Now in this area Madam Chairperson, there is no water for the individuals mainly those who are staying over these tunnels because most of the water is being drained from the mines everyday. That is why the mines work 24 hours. If the workers in Kilembe Mines do not go underground just for a day, the whole of Kasese Town is going to flood because the water must be pumped from the mines. Where does this water come from? The water table has been tampered with. So the individuals staying in the areas on those mountains do not have water to drink and therefore this shows that these individuals must have some other benefits where they cannot have water. Madam Chairperson, if there is no water on the top soil, that means you cannot do agriculture. The soil is poor because the water has been drained and therefore agriculture in this area is very poor and it is common most of us that our livelihood depends on agriculture and where we cannot do it, then we have a problem.

Another point Madam Chairperson, is soil has been eroded. Just go to Kilembe Mines, stand in the valley, look above the mine, you will just see bare soil because most of the soil has been eroded through the activities of mining. Where there is no soil, you cannot have agriculture. Another point Madam Chairperson, is this area where we have this mining. I am concentrating on this just to give a real example in life of what has happened or what is happening. You come to the environment. Most of the affluent, the bi-products from the mines were being disposed in a river called river Nyamwamba and all this was being carried to Lake George and the fish in Lake George as I talk now is really poisoned and yet fish is the common protein for the common people in the area. Now if the fish is already poisoned, it means also other things are being poisoned.

Look at the land as you come to Kasese Town. The land surface is what you see, all the plants have been destroyed by the products of mining and therefore we who are here are not proud of any land. Most of this land has been destroyed. I would like to stress the point raised by Dr. Okullo Epak that the activities of exploitation are very destructive. You find tunnels, you find bi-products being thrown around. Therefore it should be the duty of whoever is exploiting to remedy the situation of the land because if you talk about pollution, most of it is caused by industrial activities and if you leave it out at this critical point, then we shall not be serious. Any other pollution we will be talking about may not be as serious as industrial activities which involve exploitation of minerals, and it is on this point that I say the issue raised by Hon. Dr. Epak must not be ignored. Otherwise if we ignore this, the exploiters will exploit, just destroy the environment and not bother as it has happened in Kilembe. Nobody bothers because it was not upon the exploiter to ensure that these bi-products are taken away.

With these few points Madam Chairperson, I stress that the individuals who are around the minerals should be the immediate beneficiaries and then the local government and of course also the central government. So I support the motion on the Floor. I thank you.

**DR. MATOVU:** Thank you very much Madam Chairperson. Madam Chairperson, I support the motion on the Floor. I think one of the best ways the

government can protect the interests of a country, in this case the minerals and so on, is by having a finger in the pie itself so that they gain something and that way, they can protect better.

I remember one time, there was a wave of Africanisation, I think business or something like that and they said well, Africanisation must take place and foreigners used to put Africans for window dressing. They never gave them anything to do and the government could not do anything simply because they never ran these businesses and so on and this was a bit difficult. But I suppose if we have mining or exploitation of minerals and the government has got some special interest directly, this way, our minerals will be protected against scrupulous foreigners who might be coming in.

Secondly Madam Chairperson, I support this motion on the Floor in the sense that it is also including the local government. There could be a possibility of the central government by-passing the local government and then joins hands with individuals for purposes of exploiting minerals and so on. In which case, we may find ourselves in a situation whereby the central government is getting something and then we have an individual who is probably richer than the local government and that may cause a bit of a problem somewhere. So if the local government is also included in this kind of arrangement, I think it will be something very good that they also get something.

And thirdly, I support the idea that the owner of this piece of land also gets something as the owner so that he also benefits from, this although I tend to agree with the previous speaker who said the other people in the immediate vicinity of these areas should also get something out of the exploitation. On those grounds Madam Chairperson, I think the amendment is good. I support it in the sense that also the central government, the local government and the individual are gaining something and I think our minerals are being protected against any potential unscrupulous foreigner who might take advantage of the situation. thank you very much.

**MAJ. TUMUKUNDE:** Madam Chairperson, I support this amendment save for just one area which I think should be cleared for me. Madam Chairperson, I have visited an oil state in Nigeria where I found surrounding communities horridly poor. Since that time, I have always considered the

view that the community in the area should benefit to a certain extent from whatever is got as a mineral or an ore or any other resource that brings sort of income to government.

However, I have a quarrel with the word individual. Most minerals for example Madam Chairperson, are not mined vertically, where you dig going down. Most of them you dig going down, then you start spreading to the sides. that means you cover a much big area than the land where the very opening is, and therefore presumed to be the individual's area of interest or the land itself. So when it comes to individual, I find it very difficult.

For example, oil. Oil is a table like water and it spreads broader than where the drilling point is. I am therefore opposed, I must say, to the point of where an individual is given a special benefit. I would rather support that the movers of the amendment would accept or would say instead of individual, the interests of the community. Because I am not very satisfied with the local government. The local government here may mean the now commonly known structure of the district council and all this and this may not cover the community. So Madam Chairperson, from the experience I have with Nigeria and from the fact that minerals spread beyond just an individual point where they are tapped, I support that we amend this very good motion, remove individual and put the word community and thereon, I will support it without any reservations Madam Chairperson.

**MR. KAJURA:** Thank you Madam Chairperson. First of all, let me repeat that oil does not flow in the ground. We have hydro-carbons which come from sedimentary rocks which arise out of the decomposition of living things, plants and so forth. It does not flow as such.

**THE DEPUTY CHAIRMAN:** Hon. Sakwa has information.

**MR. KAJURA:** I do not think he is more competent than I am on this matter. Can I proceed? Lady Chairperson, mining is capital intensive. It calls for substantial amounts of money in order to be able to do economic and viable mining. Now let us not confine ourselves to the simple man, who pans, who digs up little gold and so forth. That is not economic mining. We are going to move into economic mining which calls for substantial in-

vestment and in order to have that, those who want to invest their money will want economic areas of blocks. You cannot carry out meaningful and viable mining on small blocks. So this is why when we talk about owners, I hope we are not referring to these small plots owned by individuals. If we ever have that situation, negotiations become very difficult terminable and very complicated if not unsuccessfully inconclusive. So generally when we are talking about mining, we are talking of heavy investments and these heavy investments must have an adequate area where they can actually operate, otherwise nobody will sink his money into these small things.

Secondly as has been pointed out, when we are mining, for example, let us take gold. You will have a stretch of gold here but it will be stretching far. If you want to mine that gold economically, you will have to operate horizontally and this will mean that you have to go very far in the pursuit of that gold. Because it is not found in its purity. You have got to knock it out of very many rocks. It is a very expensive affair if you have got to do it economically. So these operations Lady Chairperson, are very expensive and involve lots of money and if it is going to be viable, they have got to operate on a large area.

Now on the question of the environment. Many years back, the environment was not a very important matter. Today it is. We have just passed an environmental law which covers some of the suspicions or the observations which have been made. Now for every project, whether it be mining, or a factory, there will always be an environment impact assessment carried out. This means that it will be necessary for those who are sponsoring the project to undertake, to remedy whatever they will have upset. They will have to fill up the holes, the pits. They will have to replant grass and so on. There is a law already and what I see in 278 more or less emphasizes the law which has been passed. So, we are not living in a time of environment and perceptions are very different today from what they were. When Kilembe was started, environmental considerations were not important, and they were never included. This is why those who worked on the mines did what they did, and never cared about the environment. We are now trying to sort this matter out by getting cobalt out of those heaps. As we realize more and more cobalt, so do we remove those elements which are actually degrading the

environment in that area, and what the Hon. Member Mbula Muhindo has said is in fact correct, anybody who has been to Kilembe would see that they do not have to bring in an environmentalist to see the degradation which has taken place.

If we are going to talk about ownership, I think it is acceptable to all of us that the local people in that area should be involved, and compensated by deriving benefits out of whatever is achieved. The district and the central governments should reap benefits too, and I think on that principle we all seem to be agreed. But in whatever way we discuss this issue let us remember that mining is not just a simple thing. Mining is complicated, it calls for a lot of money, and investment and, therefore, you can't do it in small places like some of us are saying in two acres or one acre. You are not mining, but just enjoying yourself, and showing other people how you can get little gold, and that is what we see people doing in Buhweju and so many other places. Thank you Madam Chairperson.

**MAJ. GEN. TINYEFUZA:** Madam Chairperson, I am a bit sympathetic with this Motion. Although it does not come out on the ownership of minerals, we have decided to just deal with exploitation. But in my understanding, land includes anything found on that land permanently, including the houses built thereon, and therefore, I think it is implied that the minerals ultimately will have to be owned by the owner of the land although we do not want to specify it here.

Madam Chairperson, there are two principles I think which are so important here, the issue of the individual having an interest and the community. I am a little bit disturbed by people who want to exclude an individual. I do not know what they have in mind if minerals were found on my land and government or whoever is in charge decided to build a factory on my piece of land, who should gain out of my loss of my land where I used to grow beans? Is it the community, or me who has to vacate? I find it rather interesting to say that an individual should not feature, especially considering Hon. Okullo Epak's point which I think is very fundamental.

Apart from Kilembe and Hima areas, there has not been any other major industrial mining in this country. But talking of Buhweju and Karamoja; these are alluvial gold collectors. But if a person

was to take graders and excavators, to carry out industrial mining you will find you will have to use almost 90 square miles, and several people will be displaced as a result. You will create craters, and these people may even have to get alternative areas until those craters are refilled. So I think there is a basic interest for an individual, Madam Chairperson to be either compensated. At times, he may not only get an interest, you may have to compensate the man, who may not stand the noise of your caterpillars and excavators. Madam Chairperson, there is no way you can leave out the individual or the community in this.

Now, referring to a neighbour who may be disturbed, by mining activities on my land, I think that is where our inclusion of local authorities in this article comes to play. I think that is what it means. It means I will gain as an individual, but because of the inconveniences caused to the neighbourhood, we have catered for the community by including the local authorities. With this, we do not need to mention the community again. I think this is a very clear point. So the individual and community are not in conflict here. Madam Chairperson, the issue of community and individuals in mining should not be taken very lightly.

Take, for example, times when you hear about the war in the Sudan for instance, some people have the tendency to simplify issues and they think that the war in the Sudan is merely about sharia law. Actually it has other basic problems. One of them is the exploitation of petrol in Southern Sudan. A lot of petrol was found in Southern Sudan, East Equatorial whatever specific place, and the government decided to build the Pipeline so that they go and process the oil at Port Sudan. The Southerners insisted, they wanted their oil processed in the South to create jobs and build industries. That is an economic war other than sharia.

Another very serious conflict was as you know the Nile. As you know, the Nile meanders so much when you go beyond Uganda into the Sudan, and when it meanders West a lot of water is lost. So the Northern government decided to dig what is called the Jangala Canal, which cut off all the water of River Nile which meanders to the peasants in the West, and let water flow direct to fill the Dam and deep up the Aswan Dam in Egypt. What does that mean? It means total destruction of the Western peasant. So the Jangala Canal is a very thorny issue

forget about sharia law, these fellows are talking about human life. So this is just to illustrate how a community and an individual for that matter, can adversely be affected by insensitive government policies of exploitation of minerals. And, these are factors we must be very clear about, that in future government should take into account the community interest, the individual interest, and I am very happy about Dr. Okullo Epak's amendment. This is to ensure that no body, opens up the country and later on goes to hide in a hotel somewhere.

Infact in Israel, when you mine, you are even required to take the trouble to bring Arab land and put it on the surface. Since after excavating the land you will have destroyed that qualitative land which produces crops. You see, the danger is that before mining, the land was agriculturally productive, now when you are leaving you say I must leave you - I won't go to that extent anyway, I can see the mood in the house does not want to force people to do that. But my point, is that considering interests of the individual and the community in exploitation of mines is very important. I am willing at great pain to leave the issue of ownership hanging. I do not think it is all that important.

I think it is clear, so I would like to specifically support this amendment and urge members actually that they do support the amendment because it solves three basic problems. The problem of the individual, the problem of the community, and the control, protection, regulation or supervision of the government. I think those are the three (3) basic things which we have achieved in this amendment, and as a compromise amendment, I would like to support it and beg the Members to support it. Thank you Madam Chairperson.

**THE DEPUTY CHAIRMAN:** Hon- delegates, I want to give one state holder, and then we vote because there seems to be a consensus emerging. So let us have Hon. Bwambale, and the mover Hon. Epak then we pronounce ourselves.

**MRS. BWAMBALE L:** Madam Chairperson I belong to committee I and my chairman has already made the presentation. I strongly support this improved amendment, because I think it has improved on the proposals that were presented by committee I, and I do request that the Members of my committee together with the chairman of the committee go along with this improved proposal which is on the Floor.

Having made my observation on this improved amendment, I am happy to note that this amendment in section (i), takes into account the interest of the owners at all the three levels which I talked about when I informed Hon. Kajubi on the land owner, the central government and then the local authorities. But when he continues to use land owner in a singular manner, without adding land owners with an (s) in brackets. I am feeling a bit uncomfortable, and I hope the mover of the Motion will clear my mind on my proposal that he should consider to use land owner and then put an (s) in brackets, it may carry another meaning.

In Clause (2) when the movers proposed that Parliament shall make laws to regulate the exploitation of minerals and sharing of benefits arising from the exploitation, I support that but can they clarify to me when they talk about benefits alone. What about the liability (ies) who will be charged with meeting the liabilities. Is it clear that in this proposal the liabilities will be to government or the liabilities will also be equally shared among those who are going to share the benefits? I want to support this amendment, when it is clear in my mind that when we talk about sharing the benefits then perhaps we are very clear that, when Parliament is making laws it will be very clear on who is supposed to meet the liability (ies). My second question on this proposal is, who is going to be charged with funding the aspect of prospecting these minerals? I would not like to see government come around when they are prospecting or the investor is prospecting and then me, an individual who is involved right from point A of prospecting. I am also required to invest something in the procedure of prospecting. Madam Chairperson that should be clear when we are talking about this proposal. Supposing it is necessary for counter part funds to be solicited *-(interruption)-*

**MR. ELYAU:** I want to inform my sister holding the Floor that if you are taking an individual as an interested party commercially and industrially, he or she is to take ventures which means he or she should be ready to hold all other activities be it loss or profit. So that was a very serious element you should note before you are convinced. Thank you.

**MRS. BWAMBALE L:** I thought that is what I had in mind that we are really committing an individual to all the aspects of the mining, and at the end of the day, the sharing of the benefits. All the same the movers will clarify.

**MR. NDEGE:** I think the idea is, if Hon. Ndege comes to Kasese and destroys some piece of land because he thinks there is gold, the interests of the people whose land I have destroyed must be catered for. I put a risk as an investor, I come and tell you there is gold here so I must pay you for the interest. If I make money I pay royalties, and you as an individual you should also share. The actual risk is taken by the entrepreneur who takes the risk to invest. Now if I destroy your land and I score Zero it is my problem, but I must compensate you. I think that should be made clear. Thank you.

**MRS. BWAMBALE:** Madam Chairperson, with that understanding, I am very happy that this proposed amendment is taking care of an individual and that an individual will just come to share the benefits. Madam Chairperson, I strongly support further amendment by Hon. Dr. Okullo Epak for the reasons already given by the Members who come from Kasese district, that we have been suffering greatly due to the mining activities in the districts and at the end of the day we have come out worse off than we were. Especially, when it comes to open cast mining where several pits, especially, with Hima cement factory where the open cast method is being used people have been deprived of land for agricultural activities, and at the end of the day they are being left with pits which are affecting the cattle keepers who are keeping animals in that place. I would, therefore, be happy if the mining act is amended immediately to take into account the provisions which Dr. Okullo Epak added.

Coming back to my committee as I wind up; the committee did propose a third Clause which was defining mineral, and I want the movers of this Motion to look at that Clause on page 11 and in that definition the committee excluded, "for the purpose of this article mineral does not include clay, murrum, sand or any stone commonly used for building or similar purposes". I request the movers of the Motion that this Clause now should lie redundant, having included the owners of land to benefit by this proposal, it is not necessary, therefore, to exclude clay, murrum, sand and stones from this definition. I would love to see the owner of a hill with plenty of stones being mined, to benefit from the same. With those observations, Madam Chairperson, I beg to support the amendment.

**DR. OKULLO EPAK:** Madam Chairperson, I would like to start by assuring Hon. Bwambale that all her observations and remarks pertaining to this

Motion are very good, but unfortunately they could not all be expressed and accommodated in the text of a Motion intended for a constitutional provision. I believe that at the Parliamentary stage or at the time of enacting of the individual act for instance the environmental, the mining act, and so on, most of the details and observations she has made will be appropriately accommodated by the future Parliamentarians.

Madam Chairperson, I am persuaded to support this Motion because much as it has decided to be vague about the whole issue of ownership, it has in a way accommodated the issue of ownership in terms of the statement that mining-mineral and mineral ores shall be exploited taking into account the interests of individual owners, local government and central government. I read the interests of individual owners as including the question of ownership of land and all that goes with the land, Madam Chairperson.

I also take it that the interests of local government and central government weighs the economic benefits that central or local government may derive from mining activities. Madam Chairperson, it is my submission that putting the totality of the mining activities in the context of economies of it, the greatest beneficiary(ies) of the economies of the mining activities are only two persons. That is the government be it central or local government and the business, that is entrepreneur. I am not quite sure that the entrepreneur need necessarily be the government or the land owner or the owner of the mineral, Madam Chairperson. That is why I find the utility aspect of this Motion most persuasive, and I think delegates will find it a much better formulation than what was contained in Clause (1) of article 278 of the committee's report.

Madam Chairperson, I am also supportive of this Motion because it takes care of the economic interest or the welfare interest of the individuals communities, and governments. It indeed has by my amendment accommodated issues of environmental considerations in a most effective way. I regret that there were people who felt that this particular environmental aspect should have been relegated to the article dealing with environmental issues.

I think on the issue of mining, we should not leave environmental considerations vague, we should at that point be very specific in specifying what we

consider should be the environmental dimensions which future Parliaments should address. I am, therefore, convinced that the inclusion of the two paragraphs which I made have gone a long way to resolve that doubt, and I would think that future Parliaments would take seriously the issue of environmental considerations arising from mining activities. They are various, Madam Chairperson, they include public health aspects, chemicals, weeds, and a degradation of land as well as the lives of animals and the entire eco-system. So when you consider indemnity, Madam chairperson, we are not only talking about the people; we are talking about the trees, animals, and insects that will be affected by the consequences of mining activities. I think that this Motion is most comprehensive, very satisfactory and in conclusion I would like to remind delegates that when we talk of royalties we are really not talking of the entire economic output of mining activities. As a matter of fact, royalties have invariably been no less than 2 per cent of the entire economic output of mining activities. So when we talk of royalties, people should not be scared and think that royalties means the entire economic benefit arising from mining activities, a very small fraction and that fraction in our own consideration should benefit the individual or the immediate community in the mining area. I thank you Madam Chairperson, and I beg delegates to support this Motion.

**MR. KOMAKECH:** Madam chairperson, I would like to express my gratitude that this amendment has been generally accepted, and I think Members have been very constructive in their suggestions which have been incorporated. Without wasting time, I request that the question be put.

**THE DEPUTY CHAIRMAN:** But before I put the question, I think we may need to refer this one to the technical committee for drafting. Because the Parliament shall make laws to regulate then to sharing, you see it does not flow. We need to be consistent. I propose that we accept the principle but then we regularize the English. So we assume that this one has been taken, and we are saying the minerals and mineral ores shall be exploited taking into account the interests of individual land owners, even the bracketing of the (s), I think that one can be taken care of by the committee, local authorities and central government; and then secondly, Parliament shall make law to regulate and then we go down. I now put the question.

*(Question put and agreed to.)*

**THE DEPUTY CHAIRMAN:** So article 278 those (1) and (2) have been taken Now we go number (3).

**MR. KASOLE:** Madam Chairperson, I thank all of those who have contributed to this article, and all of us have benefited a lot. We go now to clause (3) of the new article 278. The committee recommends that Clause (2) of former article 276 as it appears in the draft constitution be re-numbered Clause (3), and it reads as follows "For the purpose of this article, mineral does not include clay, murrum, sand or any stone commonly used for building or similar purposes." I beg to move.

**THE DEPUTY CHAIRMAN:** But Hon. Bwambale had a different view, what comment do you make on that one.

**MR. HASHAKA:** Madam Chairperson, I would like the Chairman of the committee to clarify the types of building materials he has talked about. Madam Chairperson, clay is a mineral or part of the material from which we get limestone. So clay is not just a building material. So I would like him to clarify as to whether it stands to be included in the same class as murrum, sand or any other stone.

**MR. ERESU ELYANU:** Madam Chairperson, to clarify this issue, I would say that we commonly use clay for the purpose of satisfying our local interests. The question of saying clay is used for getting lime stone, is so technical and it takes a long time that it is not something conceivable within the concept of this constitution to think that the clay we have today tomorrow will become lime stone. For that reason clay as classified here is to make -according to its common uses usage to the population in that we use it for making pots, or any other thing that we think of within our own destiny. So to classify clay as a mineral, will mean making it very difficult for the ordinary person to use clay, since it will become private property.

**THE DEPUTY CHAIRMAN:** I think that is clear. I put the question for article 278 as amended to stand part of this constitution.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** Article 278 as amended does stand part of this constitution. Hon.

delegates. I still have only 5 minutes to the usual time of adjournment. I propose that we adjourn and when we come in the afternoon we shall start with article 279. But before we leave, I think it will do us some good if I allowed Hon. Dick Odur to move his amendment for you to go with it in the background so that when you come, you will have an informed mind. Hon. Odur introduce your amendment, substantiate it, then we adjourn and then when we come back we shall be -

**DR. DICK ODUR:** Madam Chairperson, my amendment is to delete article 279 and replace it with the following: "Parliament shall by law provide for measures intended to protect and preserve the environment from abuse and degradation and to manage the environment for sustainable development. I beg to move.

**PROF. KANYEIHAMBA:** Hon. Odur's amendment is simply what is in the text. I want him to clarify this so that we are not confused. If it is not a new provision, he simply wants us to delete the last words of Clause (1) and the rest in that Clause. So that is how he should have worded his amendment. It would not create any controversy that he wants us just to delete a few words from Clause (1) and then delete the rest of that article, and that would be much better. I thought if he could put it that way rather than creating an impression that he is giving a new amendment.

**DR. ODUR:** Madam chairperson, that is the position to delete the words including provision for and then sub-clauses A-J from the committee's report.

**THE DEPUTY CHAIRMAN:** Okay, this is a very long amendment, we will need to go eliminating the a, b, c, d, e and f. So let us go and have that one in mind. Also I wish to request because it seems we may finish our work in the afternoon, I wish to request the legal and drafting committee - Hon. Kanyeihamba, I am saying that I am requesting your committee to be ready with all those things we asked you to synchronise so that you come back and we deal with them tomorrow. They should be distributed to the delegates, I do not know whether they already have them. We have something pending on whether Parliamentarians should be ministers, another on women, and some others which I cannot remember. So we shall be dealing with those ones tomorrow, should we finish this today.

**PROF. KANYEIHAMBA:** Madam Chairperson, I was not aware the substantive reflows which came to committee, had already been handled by this august assembly, I was not aware that we have others. There may be a few others but the drafting committee has had no opportunity to consider them so as to be ready to report them tomorrow. I request to go and consult with the technical committee to see what matters are still pending and may be I can report the situation this afternoon.

**THE DEPUTY CHAIRMAN:** That was the whole purpose of my requesting you at this juncture. So we stand adjourned until this afternoon at 2.30.

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

**THE DEPUTY CHAIRMAN:** When we adjourned in the morning, we had indicated that Hon. Odur would amplify on his Motion, but before we do that, we skipped one item and that is former article 277, or the original article 277 as in the draft which the committee proposed to delete. Powers of Parliament relating to land, after passing 278 I went to 278 and skipped 277 at the bottom of page 11, are we together Hon. Kasole Bwerere.

**MR. KASOLE BWERERE LWANGA:** Madam Chairperson, the original article 277, powers of Parliament relating to land, the committee recommends that the article 277 of the draft constitution be deleted. The provisions of this article have already been catered for in the previous article under this chapter.

**THE DEPUTY CHAIRMAN:** So I now put the question.

*(Question put and agreed to.)*

**THE DEPUTY CHAIRMAN:** 277 is deleted. So we proceed with Hon. Odur's Motion.

**DR. ODUR:** Madam Chairperson, my amendment which was presented before we went for lunch is on article 279. The amendment seeks to delete the last words in the clause including provision 4 at the end of Clause (1). Then also to delete the rest of the articles presented in sub-Clauses A to J. Madam Chairperson, the provisions that appear under article 279 Clause (1), sub-clauses A to J, are details that should appear in an act of Parliament but

not in a constitution. There is nothing technically wrong with those provisions but by listing them, you are bound to leave a number of other very important principles as indeed it has happened in the case of the provisions under this article which incidentally is the same as the provisions in the Odoki draft.

For example, you find that the important provision for environmental impact assessment, is not included. You find that provision for protection of forests actually is not included, what is included here is the protection of forest reserves. We also do not have provision for protection of bio-diversity, and a lot of other things. Now this could go on and on and the best thing would be to leave these provisions out of our constitution, and they could only be considered in an act of Parliament.

Madam Chairperson, the question of environmental protection is a very current discipline and it goes on changing from time to time. Those of us who will recollect the half summit which was held in Rio De Janeiro, Brazil in 1992, will recall that a number of principles were discussed and agreed upon with regard to general rights and obligations of states and people on environment and development. Before the Rio half summit took place, the African states themselves met and developed a common African position on the protection of the environment. Madam Chairperson, these activities which took place way back in 1992, actually took place long after the Odoki report was made, and some of the principles which are now being advanced by the Odoki Commission, do fall short of the common African position on the environment.

In order to achieve sustainable development, environmental protection must actually constitute an integro part of the development process. It must be part and parcel of the development process, and cannot be considered in isolation. So in making some of these provisions constitutional, we had not taken account of this situation. Matters like location of factories, establishment of rural development schemes huge schemes such as dams, rice schemes, and use of water lands for agricultural purposes use of toxic chemical and pesticides for disease control, on our animals and plants are matters that keep changing from time to time, and they should normally conform to national standards as per our environment impact assessment criteria.

The environmental impact assessment as a national instrument should be undertaken for any proposed activities that are likely to have a significant adverse influence on the environment. When you realize that the current list which we have provided for under article 279 does not include provision for the assessment criteria, then I think you will realize what it means by making a list that can never be complete.

Madam Chairperson, I would urge Hon. delegates to support this amendment so that Uganda truly embarks on what is now termed sustainable development which in fact means, development that meets the needs of the present population, without compromising the ability of the future generations to meet their own needs at the time. Madam chairperson, those are the few reasons I would like to give with respect to the deletion of the provisions under article 279, and we only remain with an enabling article that will allow Parliament from time to time to legislate for the protection of our environment. I beg to move.

**PROF. KANYEIHAMBA:** Madam Chairperson, I very strongly support the amendment moved by Hon. Odur. In addition to the reasons he has given, I want to remind Hon. delegates that the Hon. Chairman of this august assembly among others, has explained the danger of enumerating certain things under a general Clause without actually exhausting the list as Hon. Odur has very ably argued. That has effect in fact of excluding those areas which the makers of the law had not contemplated before.

Secondly, Madam Chairperson, a constitution has what we call ambulatory nature in the sense that its provisions should be able to move with times and adopt the circumstances as they arise. However, if we look at the various items which have been listed, these are matters of which we are aware now. But we are not aware of environmental degradation or impurity that may come later with new inventions in science and technology. Therefore, it is more important that we have a general enabling law that empowers Parliament to make protective and preservative measures for an environment so that they are not limited in their consideration of these matters.

Thirdly, Madam Chairperson, we have again and again ourselves intimated that we are making a

constitution which provides for general guidelines if our society is to be organized and governed. Now if you look at what Hon. Odur has urged for in Clause (1), Parliament shall by law provide for measures intended to protect, preserve the environment from abuse and degradation and to manage environment for sustainable development. These are all incumbering, you can visualize any situation whatsoever, it will be included in those enumerated purposes for this Clause. Therefore, it would be much more rational to leave everything that you can contemplate to be covered and discovered by Parliament rather than predetermine the issues for which Parliament may legislate. More often than not, when the constitution has been interpreted, it has been interpreted in such a way that if the makers of this constitution had wanted you to cover this particular matter, they should have enumerated this constitution. Since they did not you have no mandate to legislate upon it. So in other words, the judicial attitude which is always very conservative is to say, we can only say that your powers to legislate are limited to what you have enumerated.

I say this knowing that the provision here say ~~including provision 4, but these words have also~~ been conservatively interpreted. So from a constitution point of view, from Parliamentary point of view, and from the interpretation of clauses in constitutions, I would urge Members very strongly to support and approve the amendment moved by Hon. Odur. I thank you.

**MR. CHEBET MAIKUT:** Madam chairperson, first of all I would like to plead with my Colleagues or Hon. delegates, to bear in mind that over the years Ugandans have been concerned with the question of political security. It is all just realistic that the people of Uganda have come to know that the question of environmental security or ecological security as such, is also as equally important as political security. And, therefore, Madam Chairperson, it is surprising, that when we come here we should not be ignorant of what has been happening in the area of environmental protection.

In so many countries now including the developing countries, many governments have responded to the challenges of environmental degradation since they touch on our basic lives of our ordinary people, and as a result, many countries have now come up with provisions with measures that are meant to respond very positively to averting problems of

environmental degradation. Madam Chairman, if it is permissible, I would quote you some few figures, I think it will be surprising that at this level we should be concerned with putting on what I would call metallic doors.

In the past, people used wooden doors for their shops, now over the years because of the problems of robberies, people have responded to putting on these metallic doors. In this respect Madam chairperson, I would like to plead with my Colleagues that Ugandans or Uganda as such, should not be left behind in this area of environmental protection. I have had opportunity to look at few constitutions where already measures or provisions intended to conserve and protect environment have been included in their respective constitutions, and therefore, I see no reason why we in Uganda should not go ahead more so when we are being faced with a number of problems regarding our environment. Therefore, if we can look at a few cases, for example, right now as we speak it has been pointed out that about 500,000 cubic metres of waste water is discharged into L. Victoria, I think annually if I am not mistaken.

There is one factory which discharges about 25,000 cubic metres of polluted water, and this is quite dangerous to our health for our well being. So I would like to allay the fears being pointed out by Hon. Odur and Hon. Kanyeihamba that there is no need to indicate some kind of skeleton functions in our constitutional provisions, and yet I remember very well that at one stage Hon. Kanyeihamba has been on the front line advocating for skeleton functions of certain constitutional provisions which we have already passed.

I remember where we wanted to leave a particular aspect to Parliament, some Hon. delegates including Hon. Kanyeihamba were on the front line to say that, let us put at least some kind of skeleton functions which can even guide Parliaments of the day so as to tune themselves to specific area. First of all, I know that the provisions as they are here are not comprehensive. In other words, they do not adequately cover our environmental problems as of now. For example as pointed out by Hon. Odur, the question of environmental impact assessment, is not indicated here, and I would like to suggest that we should improve upon these constitutional provisions. I know there are many environmental problems which are yet coming to face or which

may face us in future, which we may not be aware of now. We are also aware that science and technology is advancing and there may be new techniques that may come to life.

Nevertheless, I strongly believe that there is need to put some kind of skeleton functions which will be a sure measure of safeguarding our environment to ensure that we have sustainable development, for the good of our children, the grand children and for so many generations to come. In that respect, Madam chairperson, I beg all Hon. delegates to kindly uphold this provision in our Constitution after all they are very few and these are only skeleton functions and the way the Odoki draft was put in place, it simply says *including* -it is not exhaustive in itself. In other words there is room to add more as and when the need arises. So I strongly oppose the Motion moved by Hon. Odur.

**MR. ZZIWA GEORGE:** Madam Chairperson, the mover of this Motion has spoken at length to show the importance of this provision. He has pointed out a number of areas that are not included, but ought to be, only that he felt the constitution should only provide for the principle and not elaborate all the areas that should be included in the constitution regarding this very important subject. The environment is a new concept and it is making striking headlines all over the world, and for that reason, the people and citizens and all people in Uganda should realize that this awareness which is being woken up to has to be implanted not only in the present generation, but also in our young generation and that is the schools, and all the sectors of our society, and the only way we can do it, Madam Chairperson, is giving it as much publicity as its possible. And, publicity which has law which has a muscle and a muscle non other than the constitution itself. We should make sure that we bring to the attention of our boys and girls the dangers that might arise out of mishandling the environment, and as the mover has already pointed out, alluding to agenda 21 that is the De Janeiro regarding the summit for the heads of state held in South America. This one shows how globally important this concept is being taken, and by just including a small skeleton- I mean by including just the principle, I do not think people will really take us seriously that we are really giving due regard to the importance of this subject. Madam chairperson, the question of dumping toxic material and its dangers have already been alluded to by a number of delegates in this House.

A case was related of a this particular country, where it was reported in the papers that the minister could not take this bribe because of his love for this country. Madam Chairperson, with all those examples, I have tried to bring up, I just want to show that we just cannot pass this subject by just including a paragraph in the Constitution and leaving it to rest. I would, therefore, oppose the amendment, and that a skeleton provision enumerating some of these aspects.

Looking at the way the committee worded this provision, it is quite clear that they were aware, they cannot enumerate all that should be enumerated and that they only say, providing for some of the things. As we go into the next generation, we definitely know that new problems will arise regarding the environment, but that does not mean that we should not really give a skeleton as debated by the previous delegate. Madam Chairperson, I oppose the Motion. Thank you very much.

**MR. KAYONDE:** Madam Chairperson, the control and the protection and preservation of the environment is the basis for human existence. We are now confronted world wide with AIDS, we do not know how AIDS came and the source too remains a mystery. Right now there is a catastrophe going on in Zaire, Ebola Fever. Now really our existence is based on how we are going to control the environment, and I have also noted a dangerous tendency that has crept into this CA, that something which we are not sure or which we do not want to commit ourselves on, we shift to Parliament as if Parliament will be composed of super humans who cannot- and I think really as Hon. Kajjuka said yesterday, everything that we tend to say Parliament -(Interruption)

**DR. KEZIMBIRA MIYINGO:** Madam Chairperson, I want to inform the people who are arguing for the preservation of these Clauses, that we have already passed a Bill in Parliament, the environmental Bill which is detailed on this, and they should not labour so much to oppose the amendment. Because the details are already taken care of. Thank you very much.

**MR. KAYONDE;** Madam Chairperson, if we were to hold that view, then there would be no reason why we are here. Now I want to give instances where the governments and Parliaments -(Interruption)-

**PROF. KANYEIHAMBA:** Point of clarification. Madam Chairperson, in this draft whether you enumerate what you are saying should be enumerated, you are still leaving it to Parliament to enact the law. So really to say that if you enumerate them here, then you will be doing the job of Parliament is not correct, because the formulation here is that, whatever you enumerate is still for Parliament to enact the law. So can you clarify what you think is the difference between enumerating them here when Parliament is the one to enact them, or when we already know that they are already enumerated? The power is up to Parliament, and presumably then they will go to the environmental statute which has already been made. Could you clarify that position please.

**MR. KAYONDE:** Madam Chairperson, I do not think what is enumerated here constitutes what would be in the statute. For instance, there is the game parks act, but here we are saying protecting game parks and game reserves. That means, we have put up a principle that there should be an attempt by Parliament to pass a law to protect game parks, then they will go into details but the principles are set, and I wanted to inform the CA that relying on Parliament per se, is not a safeguard. For instance, in multi-party system each party will have its policy on environment right. Now you may find that one particular group has got a different perception of how they should deal with forests. My understanding is that in constitution making, we take positions which we think will benefit our population irrespective of a government in power. It is not new that certain governments have allowed the dumping of nuclear waste in their country. So you can see relying on future Parliament or future government is not a protection. But here we want to say that dumping of nuclear waste must be avoided.

**MR. KARUHANGA;** Point of information. I want to inform Hon. Kayonde that in fact the matters he is talking about and which he wants to be written in the Constitution were very well written only last Week, and at length and after thorough research using even Internal Organisations and bodies in charge of environment and promulgated a very good law in Parliament on environment and control of environmental degradation control of toxic waste things he is talking about, and if he wanted to enumerate it is better to go and we pick from that law, and then we write all the things which

have been written in the law, in the constitution. Otherwise, this enumeration here is too short and is really a waste of time, only that may be we want to just give ourselves a job. But otherwise I think the amendment by Dr. Odur is splendid, effective, and it takes care of everything, on the rest of this wording I appeal to Hon. Kayonde to leave it.

**MR. KAYONDE;** I think I have already answered that. I am saying, whatever we have dealt with in this Assembly has got a legislation or a statute on the books. But we have gone ahead to mention the principles concerned. So I am aware there is an environmental law which has been passed but tomorrow Parliament can go and change that law. *(Applause)* What I am trying to point out is that, the environment is a fundamental aspect of our life, our people, our nation, and therefore we must provide where it is necessary. I have looked at all these Clauses and to me they are so fundamental, our life stems on degradation of the soils here we are saying the degradation should not be encouraged. Nobody should import nuclear waste or dumping, and these really are important to me, that they cannot be left to the whims of Parliament, which Parliament may as I indicated, have particular policies depending on the group in power.

**MISS BYANYIMA:** Madam Chairperson, I wanted clarification from Hon. Kayonde, but since you have given me the Floor, let me point out to him and others who would like to see this listing that in fact this listing will not show that we are conversant with the real issues that pertain with the environment with respect to our country. If we were to make a list I think that list should not exclude water pollution for example. Madam Chairperson, as much as we depend on the soil, we depend on water resources as well. We are not talking about the pollution of water that comes from across the borders like water of the Kagera, or of the Nile or local environment of water, we are not even listing it here. We are not listing energy resources, protection of energy resources, we cannot live without energy, that is not down here.

In this list we are talking about prohibiting dumping of toxic waste from outside. What about toxic waste generated from inside Uganda, that too will be an increasing source of pollution as we industrialize further. So this list is not complete, it cannot be complete because the list has to be very long we are better off without listing, but rather providing

for an enabling clause to protect and preserve the environment. I thank you Madam Chairperson.

**DR. KABAYO:** Madam Chairperson, I wish also to add my voice of support to the Motion because I think the idea of leaving matters of managing environment to Parliament is a desirable one, since the nature of the environment is such that it is changing and changeable, and the opinions on any issue to do with environment will therefore, depend on the opinions of the society or community of the day.

But Madam Chairperson, I want to emphasise the importance of land also as part of environment, and since we have supported the deletion of the sub-Clauses a to j, I would propose that we include the word land for emphasis in the main frame of that formulation so that we are talking about land and the environment to make it very clear and beyond doubt.

Madam Chairperson even the people who drafted the Odoki report also did not significantly distinguish between land and environment; sorry they did distinguish between land and environment because the title is land and environment. But in my view, land and environment are very much the same or land is part of the environment. So for purposes of emphasis, I wish to propose an improvement on Hon. Odur's recommendation by just inserting the words "land and the environment" after preserve so that we read "Parliament shall by law provide for measures intended to protect and preserve land and the environment from abuse and degradation. To emphasise the importance of land as part of the environment, Madam Chairperson. Thank you.

**MR. ONEGIOBEL:** Madam Chairperson, I was interrupted by the amendment by Hon. Kabayo and so I would like to contribute to the amendment of Dr. Odur before anyone supports a related amendment. Madam Chairperson, I do not think that the committee I really intended to give a full list of measures to be taken against environment and to protect environment, because that would be a book or books in themselves. The list here is talking about soil, animals, historical sites, insecticides, prevention of insecticides, but Madam Chairperson, where the protection of plants is mentioned it is only importation of plants that are undesirable and dangerous to our environment in this country.

And, here I would say it is only Parliament that would look or would have to look seriously into this matter. Because, this is one of the most rigorous rules or laws that countries we know of are very strict about. For instance, I knew that until recently if the law has been amended, it was almost impossible to take a life grant from here to America then left out in this enumeration which I think is very important are the bush fires. That has been a major part if not the biggest threat to environment in particular areas of this country. I am not ashamed to mention the North where every year fires are set in the process of hunting for games, and that process destroys not only the soil Hon. Kabayo is talking about, but trees, insects and even animals that are free to run away ahead of the fire. I would, therefore, suggest very strongly that we support the amendment of Dr. Odur if only because we can never list what is to be done in the protection of our environment including land.

**MR. KIRUNDA KIVEJINJA:** Madam Chairperson, I stand to oppose the amendment. *(Applause)* For the following reasons. Environment, of course, it has been emphasised it is very important and it includes everything, and it is a new awareness because people have been using it thinking it is everlasting, and just only saying that Parliament shall by law provide for measures intended to protect and preserve the environment from abuse and degradation and to manage the environment for sustainable development and stop there. I think it seems the constitutional makers will not have comprehended or given guidance to the future Parliament and generation the importance of the environment. So highlighting the specific issues which should be the beginning of legislation to protect the environment would be a first guide. Because you must all understand we have been living with environment for all years, but it is on record that it is only the National Resistance Government when it came in power which first recognized this and created a ministry of environment in the whole of Africa. So please, let us not assume that obvious things are obvious, and I have studied very closely what the Odoki report had written down.

I have also studied carefully what the committee has done, and I really would compliment the committee for having at least in this new era of awareness which is at the best of the life of everybody, has been able to put up the guiding pillars on

which the future Parliament should be able to make laws. *(Applause)* And so long as it says 'including'. In, otherwords, I want to emphasise that word 'including'. Including does not mean excluding at least from the English I was taught in Mwiri with my learned friend Hon. Kanyeihamba. So these are only the guides, and Parliament is free to do any other thing.

Lastly, you are aware of the big powers. If it is law I cannot exclude a possibility of bringing it up as a conditionality that unless you change that law, you will not be able to get this thing. If you enact a law preventing us to use your area for this purpose we are not going to do this. So we must protect our future government from arm twisting by conditionalities which may come when we are not there. So I beg sincerely Hon. Odur to drop his amendment and we go for a very well researched recommendation of the committee. *(Applause)* Thank you, Madam Chairperson.

**MISS. NABAFU:** I thank you Madam Chairperson. I oppose the deletion of the rest of article 278 and I would rather go with the recommendation by the committee. My neighbour has very well articulated and we have been sharing ideas here to be honest. He has persuaded me because at the beginning I thought this was not necessary, but he has so ably persuaded me and I am really standing with the committee because I am a Member of that committee.

Hon. Kanyeihamba has attempted to derail the committee Members from the decision they made. Madam chairperson, in as much as people seem to be happy they have shared ideas with Hon. Kirunda Kivejinja, I want them also to share these ideas with me that the Bible is a first constitution they have ever come across that is everlasting and I understand the same story is in the Koran. It says that when God created the Earth he put plants in place, he put every other part of the environment the fauna and Flora and then he put animals and put human beings. He told us to replenish the Earth, to look after the Earth and we have done such a bad job of obeying the law in the past. Thank God for the government which put a ministry of environment protection in place. Now we are just beginning, and we must continue in that trend because we can see now how much we can trust the weather pattern. Because so far we have done a beautiful job of beginning to protect our environment because there

is a ministry. But like the Hon. Kivejinja has said, donors are found of saying, unless you allow this to happen, and if you just leave it to Parliament that law can easily be changed simply because we want a certain country to help. But if we put it in the Constitution we shall avoid any arm twisting by such donor countries or donor agencies. Yes, I think so because this we have already argued that this constitution is going to be taught to all our children, our children's children, so that one day nobody will come up and hoodwink them. They will already know what we are talking about, the environment protection. But if we say we are going to delete all these beautiful clauses and we leave it to Parliament like somebody said, a political party may come up excited about power, and put certain provisions in place. Because their excitement is in a different direction. But if you put it in the Constitution, a manifesto will have to respond to what is in the Constitution as far as protection of our survival in future depends on a good environment.

I want to allay the fears of my sister Hon. Byanyima and tell her that water has been taken care of in the committee's recommendation, we are not debating the committee's recommendation so I do not want to go into details, but I want to remind her that there are so many Clauses which have been put in place just to be included in future statutory laws pertaining the protection of our environment so that we have a generation or generation to come enjoying a beautiful Earth that God has decided it to be. Because after all, everybody will be obeying this Constitution regulating everything according to the law of God, that let us replenish the Earth, and if we do it beginning with the Constitution then nobody will stand up in the Parliament and put their own law in place.

Madam chairperson, there has been so much degradation, there have been so many things which have been done which have been disorganising our environment. But if we put all these Clauses in place and we just do not delete them by Hon. Odur's amendment, we shall rest assured that the future Parliament will always remember that the Constitution is saying a,b,c and they will at least put certain law provisions according to what we have agreed here. Laws by Parliament can be changed any time, and, therefore, we do not want to take it for granted, but we must continue understanding the importance of a root of certain law and putting that root in the constitution as the best way to protect

our environment. I want to thank everybody who is supporting this particular recommendation by the Committee I. I want to beg you to continue in that spirit and throw out this amendment by Hon. Odur. Thank you for listening.

**LT. COL. KIIZA BESIGYE:** Madam Chairperson I wish to apologize for having joined the debate late, I was away on some unavoidable business. Madam Chairperson, having listened to the debate so far, I am rather confused, and I seek clarification. I have heard people talking about need to make the provisions of this protection of the environment article short by removing these specific areas of the environment that have been included. What I do not know is whether anybody is objecting to any of those areas which have been included, and thinks that may be it was a wrong inclusion for now or in the foreseeable future, so that we would see that listing them may have some danger. But if there is no body objecting to any of these areas as relevant now and in the foreseeable future if the only argument as I have heard so far is that, it is not exhaustive, then I think the debate is definitely not warranted. Because if you are only saying that it is not necessary, and the operative word here is including areas which we want to stress, then even if we were not happy with the listing, at least you have nothing to lose. And, I would in that circumstance simply request that if that is the only objection or the major objection, then those Members could surely tone down their objection because *-(Interruption)*

**PROF. KANYEIHAMBA:** Point of information. I am grateful that Hon. Besigye was able to give way for a point of information. I am sorry that he was late. But perhaps if he had been here earlier, in the thrust of the argument by the mover of this Motion, Hon. Dr. Odur, and those who supported his amendment the big danger was that when you enumerate items but you are not exhaustive, the danger is that the people who follow you in the future are likely to limit themselves to that, imagining that this is what you intended to cover, and, therefore, anything that you cover which was not included is unconstitutional.

The Lawyers are aware and this I referred to the Chairman's interpretation of a rule known as a *judisem generous* rule; which means that if you use general words, and then you follow them with particular, then interpretation of the general word must be limited to the particulars. Therefore, there

is a great danger and most of us who supported this amendment were aware of that, that is why we said that it is better, that you empower Parliament to exhaust this area rather than mention a few. It is like saying I have 15 children but please, feed Peter, John, and Joan, and you leave the rest out. Secondly, the other big argument which the mover and those supporting him had, was that in fact you are not providing this in the Constitution *per se*, because the provision says Parliament shall make laws on the following. Therefore, it is still up to Parliament whether they make them the enumerated items or others to determine that matter. So I thought that would clear Hon. Kiiza Besigye's query, since he was not here when the debate started. Thank you.

**LT. COL. KIIZA BESIGYE:** I am grateful to Hon. Kanyeihamba for that information and if those are the only two points, first of all I think that I do not fully agree with the first point of limitation by enumeration. Limitation as the Hon. Kanyeihamba himself educated us would mean that the areas to be considered would be areas of this category, any other areas to be considered would be areas of this category, of the same class of things that have been listed.

And I do not believe that we intend that Parliament will deal with other areas of different class from the class that we have listed. Therefore, that rule of limitation, generous whatever you call it, does not apply in as far as I am concerned in this particular matter. That *judisem generous* does not work here. Because whatever we want them to provide for, we want it to be of this category which is listed here.

**MR. BIDANDI SSALI:** Point of information. Madam Chairperson, I thank you for this opportunity and also I thank Hon. Besigye. I am a bit in a fix as regards to the interpretation of law between a Lawyer and a Doctor. But the point I wanted to make is that if all the Lawyers agree with the interpretation of whatever name you call that, then the debate is for nothing. Because for us who are laymen, mere assessors, we say that these are some of those mentioned but they are also others which are not mentioned. Now the clarification I want is if this is not the legal interpretation of this then the debate is for nothing. But if it is, then I was going in fact to put up my hand and say a question be put.

**LT.COL. BESIGYE KIIZA:** I was concluding, Madam Chairperson, and I am grateful to Hon. Bidandi Ssali for that contribution to the effect that we are agreed there are assessors and the Lawyers who are agreed that including means that they are others but whatever other comes must be of the same class as those ones you have listed. And as I have said we do not intend Parliament to bring into the inclusion of this any other class apart from those that fall in the same category as those we have listed. Therefore, I find absolutely no danger in listing these things, and for Parliament to include others when they so deem, provided they will be in the same category.

I would beg those who are movers of this Motion to simply, since they do not lose anything, let it pass since the commission devoted time to listing these things, and since the committee devoted time to listing these things, if there is any omission, or any other strong point we want to add we can amend this list and add it, so that we give clear guidance to the future Parliament. I thank you Madam chairperson.

~~**DR. KIYONGA:**~~ Madam chairperson, I thank you for giving me the Floor, but also for allowing this debate on the very important subject of environment. Dear delegates this subject environment has International and local implications. As Hon. Odur did mention the world summit of 1992 among other things, the super powers had wanted environment controlled as a common property. Unfortunately for our leaders from the poor countries they rejected this line. and, of course, as you know the North countries never give up easily, they keep following up their interest, and as Hon. Kayonde said, it is important that as we pass our constitution on the issue of environment, certain things are fixed to ensure that the Parliament will not be manipulated to leave us susceptible to trouble in future. At the local level, we have our own interest, particularly the peasants who because of poverty and ignorance can be dismissed as people who are damaging the environment. As we very well know, the future of Uganda, and the world at large ultimately depends on environment.

Now when I look at the trend the debate has taken, I see two points. The point forwarded by Hon. Odur who is saying let us be brief, then the general point is that, being too brief is dangerous, let us make certain protective provision so that even the future

Parliament will have a certain framework from which to operate. In my view, those of us who want to make sure certain things are fixed, we should be looking for three basic things, some of which have not been provided. One is to empower our future Parliament which everybody is not disputing. All of us want Parliament to have power to manage our environment very well.

But secondly I think beyond Parliament we should put in place an effective management infrastructure. When we discussed immigration here everybody was up in arms that we must form an immigration board because it is so important. When we reached the Lawyers we said, we must have a Judicial Commission. We have even talked about a Human Rights Commission. But in the provisions before us, both from Hon. Odur and the committee, we appear not to be concerned about the framework of how the environment is going to be managed, and I consider this a big deficiency.

In my view, it is important just as we did for immigration just as we did for human rights that we provide a statutory body which is going to manage our environment. The third element should be, to protect the ordinary people, the peasant mainly who are the majority of our people. When I see some of the formulations here saying to protect from abuse and degradation and then people are saying people are cutting trees, they are burning grass, they are burning forests. It is true, these things are going on, but the basic reason is poverty and the lack of a programme to remove it. Unless we protect the peasants I see a danger. A very enthusiastic government about environment will displace people and throw them out of their land in the name of environmental protection. We who are making historical documents should make that clear, that even when we are driving for better environment management, the people's interests must be protected. This is neither in Hon. Odur's formulation, nor the committee recommendation. It does not even appear in the draft which we have here.

Now, although we are short of time, and it would be very good if we could finish quickly, I consider the environment so critical, even beyond land and I propose that we spend a little more time and go back to some drawing board to see if the formulation we are going to pass will contain these three elements. The NRC has already provided for a good

framework, by instituting a statutory board which is going to manage the environment, and to ensure that the formulation protects the environment the peasants even when we are protecting the environment. I propose that we do what we did to land and go back and do a little improvement on what has come up.

**PROF. NSIBAMBI:** Madam chairperson, it is true that we are encircled by environmental terrorism. I refer of course, to toxic dumping, excessive charcoal burning and many other forms of degradation, and I am very concerned that this matter has not received the attention it deserves. But since this matter is very complex it must be professionally handled. It is both external and internal. External people are dumping toxic matter, they are degrading the environment, but our capacity to limit the external forces is limited. Internally we are also degrading the environment, because of many other factors including poverty. So the question is, how do we handle it, and I submit that we must handle it professionally. The most effective and professional way of doing it is to be as precise as possible. That is why I support the amendment by Hon. Odur, this is a professional matter. You do not solve it by trying to amplify when in fact you are not able to amplify the whole issue. Take the issue of population control and the issue of strategies, required to overcome the problem of degradation. Are you going to include them in the constitution? Allow me to put it squarely to the Members of this august body that if we make our document too long, it will not be read, we shall have wasted our time. If we make it brief *-(Interruption)-*

**MRS. MUKIIBI:** Point of information. Madam chairperson, as a member of the committee that handled land, I would like to inform Hon. Nsibambi that, during our work in the committee we consulted widely with the experts on environment available in Uganda, and they told us, actually they are the ones who guided us on these major principles to be put in the constitution. These are major principles we cannot put here details of land degradation we can only mention that, the laws should include land protection, industrial pollution, and these are major principles on how we can protect the environment. We did not attempt to put any details. These are just principles, and the experts he is looking for, we had chance to benefit from them while writing this report. That is the information I want to give.

**PROF. NSIBAMBI:** The Problem is that, there are too many experts. I also have experts in my institute of social research. In fact we focus on some of these issues. Given that problem, we have to use our common sense. If you take for example the formulation by the amendment, is there anything it leaves out? It embraces everything. In those few words you cover all those issues we are trying to nibble at, and you are merely nibbling at them. Why do you nibble at things and not tackle them effectively? That is the problem, and you are harming yourself by default if you nibble at these things and you do not spell them out exhaustively.

Finally, there is a question of being flexible; we are living in a situation where things are changing extremely fast, what is the priority today is a marginal thing tomorrow. Why do you put down things which are going to become marginal tomorrow? Why don't you draft your constitution in such a way that you can adopt, and handle the rampant contingent element. I beg to support the amendment strongly.

**MR. KWERONDA RUHEMBA:** Madam Chairperson, I beg to oppose this Motion on the following grounds. First of all as somebody has already said, this provision is not excluding but it is including. What has not been included in the provisions below is in the main clause. Madam chairperson, some people here seem to think that we are making a Constitution only to be interpreted by Lawyers and the elite. But, Madam Chairperson, we have just passed provisions in other chapters of this Constitution providing for decentralization, and I believe that people who are going to carry out First aid on environment are the people at the district and below at the RC level. They are waiting to hear what this Constituent Assembly has to say about the environment, and what the Constitution has to say about the environment that can be easily interpreted tomorrow by the people at that level. We are actually saying, do not enter Game Reserves, these people will pick up the Constitution tomorrow, and they will find it there that we are saying do not enter Game Reserves. They will pick up this Constitution and they will say do not enter or re-enter National Parks if you have been evicted already. This Constitution is saying, do not open up the swamps for the water to go. This Constitution is saying do not enter wet land and open the maps so that you cause havoc to the environment.

Madam Chairperson, we have opened the gates for foreign investment. These investors are going to open up industries, some of which will be making very dangerous chemicals that we may not have capacity even to understand. Some of the chemicals may enter our waters and our swamps, and in this Constitution we are telling those investors that please, come and invest, but do not dump dangerous chemicals in our swamps and rivers and lakes.

Madam Chairperson, this country has no capacity to understand certain things and we are trying to provide for them because they are topical today, because they are affecting us today. I have for almost a year fought with The Ministry of Health to invite somebody who is coming free of charge to help educate medical practitioners in our hospitals and dispensaries on how best we can carry out medical disposal. Medical disposal is already a danger in this country but we do not seem to be cognizant of this fact, and yet we are saying that should be silent about these topical issues.

Madam Chairperson, I do not think it is wise to remain silent about these issues in this Constitution. Those who argue that the Constitution is already too big are being unrealistic, because I do not think this issue is going to exceed two, three or four clauses. The Constitution as I said, should not only be able to be interpreted by the people at the top like the Lawyers and the Judges, but I believe that since we are privatising, people are going to put up a number of pollutants. This necessitates that the people understand The Constitution even at RC I level, to pick up a Constitution and say, the government or the country does not encourage deforestation, and opening up of swamps. Madam Chairperson, with these few remarks, I would like to strongly oppose the amendment and to request the House to throw it out. Thank you very much.

**MR. MULASSANYI:** Madam Chairperson, I rise to support the Motion. The matter of the environment is very important, I agree. But we do not want to go to the extent of repeating things like Mutabingwa's grasshopper. For example, part (a) of this list already appears in clause (2) (b) of article 271 and even some of these which have been listed have appeared elsewhere in the Constitution. Yet it is our aim, Madam Chairperson, not to produce an unnecessarily big volume of The Constitution through these repetitions. The argument that the list which is not exhaustive jeopardizes other useful proposals has already been mentioned. So if we can

not exhaust the list then we better leave it out.

Madam Chairperson, it is true that many countries have responded to the call of environmental protection but the call is to incorporate these ideas concerning environmental protection into their governmental policies. What matters is the policy which a country decides to put in place, and to carry out. A clause may be in the Constitution, but may never be evoked. That way it will not benefit us at all. It is already a policy of government to emphasise the environmental protection by including it in the syllabuses of our educational institutions at every level, even at the primary school level. Madam Chairperson, as I speak now, that kind of revision has already been completed, and the syllabus for the primary section of our education has already been revised to include matters of environmental protection.

Now what is being embarked on is the revision of the secondary school syllabus to do the same. Madam Chairperson, Makerere has started a degree course on this matter. We cannot put all these things on the syllabus of the schools, put these things in the environmental policy of government, put these things in the environmental act as we have already been told that Parliament has already done this, and then even include them in the Constitution. This is what I mean by saying that we are going to the extent of Mutabingwa's grasshopper which repeats things over and over again for no good reason. I think that for the sake of clarity, brevity and consistency of our Constitution, we should leave out this detailing of the Constitution. Madam Chairperson, I support this amendment. Thank you.

**MR. BANTARIZA:** Madam Chairperson, I would request Hon. Dr. Odur, if he would accept, to make some amendment on his amendment to add at the end of his amendment the phrase *and promote environment awareness*. At least if everything is not taken, then people are going to be told what to do. That is an additional amendment I propose. If he accepts. Thank you very much. Madam Chairperson, I have no problem with that because awareness as far as environment is concerned is very important, and by that addition I think we will have taken care of the requirement. Thank you.

**DR. OKULLO EPAK:** Madam Chairperson, I support the Amendment moved by Hon. Odur and Hon. Bantariza. Madam Chairperson, environ-

ment is a multi-sectoral concept. It is impossible within a Constitutional context to try to enumerate the most important things in the Constitution. In any case, by enumeration we would be giving an indication that these are matters which we consider to be most important and of high priority in Uganda. This could be today, but then tomorrow they may be the least important matters. So, I think it is not fair to enumerate. When you look at the enumeration here you would even begin to question whether these are ideally the things we consider to be most important as far as Uganda is concerned in the field of environment. Suppose we are challenged by some people in future as to whether it was our wisdom that these are the most important things, yet the next generation may think we should have listed something else - *(interruption)!*

**MISS. BYANYIMA:** Point of information. Thank you, Madam Chairperson, and thank you for giving way. Hon. Okullo-Epak, I want to inform you and the House that there is a big debate about the merits of protecting the environment and economic growth. This came out in the Rio conference in 1992, and if you take the example of global warming, you will find that the countries of the South are being told to limit our economic growth in order to protect the global commons. This to me is an even more important question to us; do we restrict our growth so that we can have a better environment globally, or do we, actually, insist on our right to grow economically? There to me are even more important questions that are not enlisted here, but they really concern our very survival on this planet. The question of nuclear waste; I see here listed down as (f) regulating nuclear waste. Do we accept the use of nuclear power in our country? Have we agreed to that consideration that there is no technological solution to nuclear waste? I think that the main important questions are not listed here as you have very well put. I thank you.

**DR. OKULLO-EPAK:** I thank Hon. Byanyima for again her usual way of putting things. I think with our limited knowledge in the field of the environment particularly when we get to dwell into the scientific aspect of it, we should avoid committing ourselves in the constitutional context, and I would advise that this kind of listing here tends to give us a commitment which could prove to be embarrassing in future. I have looked at clause 1, and being somebody who has been at the core of environment activities, not only in Uganda, but at

international level too, I think most of the key words have been included in clause 1, except the most important word. Madam, the word is 'pollution'.

I very strongly request the Chairman of committee 1, Hon. Dick Odur, that we should insert the word 'pollution' in the third line between 'from' and 'use'. The word 'pollution' is key to environment. In Stockholm in 1972 it was the case; the rich were talking about environmental pollution, whereas the poor talked about the pollution by poverty. So, the word 'pollution' is key and crucial in matters of environment, it would be a serious omission if we did not include it in the list of words here, such as I protect, preserve, abuse, degradation, management, sustainable development' these are key words in the field of environment, Madam Chairperson, although the word 'protect' is contested. There are very many environmental people and development experts who do not opt to use the word 'protection'. In its place, preservation is usually preferred. But we need not to fight over the use of the word 'protect' I would still support the inclusion of it, but I think it is a word which in the environmental field and arguments is being highly contested, because it could be done to the detriment of the human needs.

Hon. Dr. Kiyonga raised the issue of the institutional arrangement for carrying out the functions of the environment. It sounds a very desirable thing, in fact, it would look as if it was an omission if one of the most important measures that we needed to specify in the constitutional context excluded an institutional arrangement in the national field for the carrying out of all these duties. I do not recall correctly, Madam -but I think I read through the original formulation for the environmental law which is now being debated in Parliament, and I am not quite sure that even there they included an institutional arrangement. If they did, then of course, it would be a matter of interest because, as I said earlier, environment is a highly multi-sectoral function, and to try to put that function within an institution it would mean you need the expertise from all sectors within that institution. A very formidable task indeed. I know of the case in Kenya, where they have the Environmental Council. I also know the Ghanaian case very well, they too have an Environmental Council. The only way it functions is that it carries out a very small rudimentary and mainly a coordinating function, while the main task, the main expertise are left with responsible sectors to carry out, because that is where the expertise lies.

The question of an institutional arrangement in the field of environment is always bogged down as to who would be there and who would not be there, because everybody is environment and environment is everybody. So, that is normally the worry and question about institutional arrangement in the environment. Even when we established this arrangement for environmental planning in Uganda, it was only by the fact that most of the experts in the environmental field were co-opted to that institution that it was able to work, and I think after they did their work they were disbanded to go back to their various sectors. Institutional arrangement in this field is a very difficult matter, Madam, and I do not know whether Hon. Dr. Kiyonga would insist that we think about it. He is a Member of NRC and I would really be pleased to be informed whether the current Bill or Act, whatever it is, does include it. I do recall that a lot of us expressed reservation on an institutional arrangement in this field.

I support the Motion, Madam, and I would request Hon. Delegates to support the Amendment with the inclusion of the word 'pollution' I thank you, Madam Chairperson.

**PROF. SSENTEZA-KAJUBI (Kyaddondo North):** Thank you, Madam Chairperson. Madam, under rule 21 of the rules of procedure, I beg to move that the question be put.

**THE DEPUTY CHAIRMAN:** Okay, there is a Motion that I put the question, but I can see a very burning hand, let me give him *(Interjections.)* - but also another rule says that Members should be given ample time to debate. So, let me give just one person, Mr. Liiga.

**MR. LIIGA (Buvuma Islands):** Thank you, Madam Chairperson. Madam, Chairperson, I rise to support this neat Amendment proposed by Hon. Odur to the draft as it appears and recommended by committee 1. But, Madam Chairperson, a Constitution is actually a reference source. Its provisions are all enabling and it is on those provisions that Parliament acts to enact laws which explain and clarify the particular provisions and put in place those machinery that the Constitution aims at.

Madam, and fellow Delegates, I believe and very strongly so, that at the time when the Americans made their present Constitution, they were not envisaging the current scientific developments that

the Americans now enjoy. For instance, I do not think they had the T.V.s that we see today. These little gadgets which I have seen, telephones; some person just hanging around with a piece of wood and talking. Madam Chairperson, a Constitution should be adoptable to all changing situations, new situations keep changing and we cannot keep the provisions to particularized areas as it appears in paragraphs (a) (b) (c) down to paragraph (j) in the proposal by committee 1. Madam, when you look at paragraph (j) promoting environmental awareness through education in schools and what have you, we have already taken care of that particular situation in an earlier article which has already been passed. Madam, the proposed formulation by Hon. Odur with the addition of the last four words by Hon. Bantariza completely and neatly put the situation as we wanted it to be.

Madam, as Hon. Prof. Kanyeihamba has pointed out, to the lawyers the more you include particulars the more you signify to him that those are the only areas where you should stop. I do not think our Constitution is meant to be so narrowed down that we shall in most cases look at (a) to (j) in reference to article 279 as the only areas which we should deal with. I remember Hon. Byanyima raised a very small matter but quite important, when she mentioned that in protecting dumping of nuclear waste and toxic waste here, the paragraph talks about from outside Uganda; but what if the same stuff is produced within Uganda? Now, if we leave this thing silent on that, it would mean we are encouraging this country producing these destructive gases within Uganda and we leave them to kill fellow Ugandans. That is where the local person must be protected, according to Hon. Member who spoke earlier. Madam, without labouring the point further than that, I strongly support this formulation and I call upon fellow Delegates to support it and allow Parliament in the future to enlarge on its laws with respect to environmental protection. Thank you very much, Madam Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, I can see Hon. Odur, perhaps withdrawing his Motion or doing something else. Let me give him a chance and then we vote. He is the last person.

**DR. ODUR:** Thank you, Madam Chairperson. I just want to say that there were some Amendments made like one by Hon. Dr. Okullo-Epak, and I would like to say that we accept that Amendment.

Furthermore, Madam, I thought you could give me just one minute to summarise so that we can go straight away and vote.

**THE DEPUTY CHAIRMAN:** Hon. Odur, Members seem to be satisfied.

**DR. ODUR:** Okay, if they are satisfied we can vote now. Thank you.

**THE DEPUTY CHAIRMAN:** The matter at stake is Hon. Odur's Motion and certain Amendments that have been suggested, that Parliament shall by law provide for measures intended to protect and preserve land and the environment. Land was suggested to be inserted, then pollution. I think there will be some kind of panel beating to see how it is fitted; because it does not fit if you just add these aspects, and then add at the end, 'promote environmental awareness'. What is the procedure?

**AN HON. DELEGATE:** Point of procedure. Thank you very much, Madam Chairman. The Amendment moved by Hon. Kabayo of inserting 'the land' was no seconded! So, how could it be included, it was not.

**THE DEPUTY CHAIRMAN:** You see, what I was saying, I was just giving what has been brought in so that we vote on something we understand. So, we say that one on land was not included. So, we are including 'pollution' and 'promote environmental awareness' alone. Agreed? Now, I put the question.

*(Question put and agreed to.)*

**MR. CHEBET MAIKUT:** Madam Chairperson, we are less than the quorum. We are 140 and these are very important subjects. I believe we cannot take a decision.

**MR. KARUHANGA:** Point of order. Madam Chairperson, is it in order for the Hon. Chebet Maikut to stand up as if he is addressing a candidate's meeting in his Constituency, and to ask and state things well after the event? We have finished voting, and he was in the House. Is he really in order to bring chaos in this House?

**THE DEPUTY CHAIRMAN:** Order, order. Hon. Chebet Maikut, I have been very observant and you did not put your hand up to that effect. We have

already voted and now we shall take note of the quorum but the other issue has been decided when the quorum was there. Hon. Delegates, we have, I think, cleared article 279 on condition that we are assisted by the Technical Committee to see the best language on where we should insert the word 'pollution' to be part of the enumerated areas of concern. In that respect, I want to put the question on article 279 that it does stand part of this Constitution as amended.

*(Question put and agreed to.)*

**THE DEPUTY CHAIRMAN:** Hon. Delegates, we have another issue which I pointed out in the morning, that we have matters outstanding in Chapters which we have passed through consideration stage in the Assembly. We are suggesting that we should clear those out of the way before we go to a new Chapter. It seems we are really just postponing the problem yet each of us received the copy from the Technical Committee and matters pending are: Chapter 5, Protection and promotion of fundamental human rights. We said that there were various matters outstanding before the Legal and Drafting Committee on inter-relationship of articles in that Chapter. So, I am requesting the Chairman to take note of that; then Chapter 7 on the Executive, there is article, 106, 107, 116, 117 and 122 and 131. On Chapter 12, Public Service, we have 195 and 199; then the Chapter on Local Government, we have 205, and 208, 213, and 217. On the Judiciary, we have 173, 176 and 177 pending. So, I would suggest that tomorrow morning those committees convene and agree on the final - okay, Hon. Mulenga, you may have a better suggestion.

**MR. MULENGA:** Madam Chairman, I want to point out that some of the matters were not referred to committees but were deferred to be revisited. For example, the two you mentioned this morning about position of ministers vacating their seats, that was not referred back to the committee to reconsider. The Chairman advised that we consult and we revisit it. The other one on mode of voting for women M.Ps was, in fact, voted on and we are waiting to vote again before we, maybe, go to a referendum. So, this ought to be sorted out. I am aware of a number of matters that were referred to committee 2 which we are preparing a report on, and I want to draw this distinction, Madam Chairman.

**MR. LULE WASSWA:** Thank you, Madam Chairman. Also when you read through the list, I notice that in Chapter 13, article 203 was not included on the list. We did not pronounce ourselves on that article, because at the time there was supposed to be a Motion that was to be brought in relation to that article by one of the Members of the House. This for some reason was not presented, but I presume that you know we have not pronounced ourselves on article 203 or even addressed that particular Amendment.

**THE DEPUTY CHAIRMAN:** Given those aspects, Hon. Kanyeihamba do you have any suggestion?

**PROF. KANYEIHAMBA:** Yes, Madam Chairperson. On the information we have received from Hon. Joseph Mulenga and others, following also on the discussion I had with the Chairman of the Technical Committee relating to these points, I would suggest that there would not be enough discussion of these matters even if assuming that everybody was to report tomorrow to have a full day of business going. At the same time it was my understanding that Committee 5 has already reported on the Chapter on representation. So, my own view is that while these issues are being tied up, could we not go straight and start debating the report of committee 5, which is more substantive and obviously it is going to take us some days?

**THE DEPUTY CHAIRMAN:** Any objection?  
Hon. Dick Nyai.

**MR. NYAI:** Thank you, Madam Chairman. My understanding from the Chairman of the Assembly was that we do all the tiding up before we get to Chapter 6, and I think, if we agree, it should be taken in that spirit. To start shifting the goal posts at last minute, I think, is not gentlemanly. I think let us find a solution, a timetable of how we do the tiding up, on whether we start with matters which were referred to the Legal and Drafting Committee, or the Technical Committee or other matters which we opted to revisit. Once we get that and make consultations about this timetable, I think this would be the only correct thing to do in all honesty. Thank you.

**THE DEPUTY CHAIRMAN:** Anyway, the view of the Chairman, was that we have this summary, all the committees concerned know what is to be done.

It is up to the committee Chairmen or their deputies to take on tomorrow, tidy everything, we come back on Thursday, and complete it. On Friday we can start on the new Chapter. That was the Chairman's proposal, so that we do not just play around lazily. The thing has been pending for a very long time and people may even forget. So, what we should do is, before we leave, let each Chairman announce when we should meet, including the Legal and Drafting committee Chairman. You should clear pending business tomorrow, so that when we come back on Thursday, we will just follow this programme. With that we adjourn until Thursday at 9.30.

*(The Assembly rose and adjourned until  
Thursday, 18th May,*