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# PROCEEDINGS

## OF

# THE CONSTITUENT ASSEMBLY

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OFFICIAL REPORT

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CONTENTS

THURSDAY, 18TH MAY 1995

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MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda

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Thursday, 18th May, 1995.

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

PRAYERS.

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

*(The Assembly was called to order)*

PRESENTATION OF REPORTS ON  
PENDING MATTERS.

CONSIDERATION STAGE OF THE DRAFT  
CONSTITUTION OF THE REPUBLIC OF  
UGANDA

CHAPTER 5 - PROTECTION AND PROMO-  
TION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS.

**THE DEPUTY CHAIRMAN:** As we recall, we gave in yesterday to see whether we can be able to clear the pending issues before moving on to a new chapter. I do not know whether Hon. Kanyeihamba you have any report on that?

**PROF. KANYEIHAMBA:** Thank you, Madam Chairperson. It will be recalled that there were a number of issues pending from some other committees other than the Legal and Drafting Committee. As far as the Legal and Drafting Committee is concerned, we did meet yesterday Madam Chairperson, and resolved the issues which were outstanding for which I believe a report of the Committee has been circulated to Hon. Members. So, with your permission, I could comment on that report.

Madam Chairperson, I am trusting that every delegate has received a copy of our report which is headed "*Report of Chairman of Legal and Drafting Committee on pending matters referred to the Committee by the Assembly, relating to Chapter Five.*" That is, "*Protection of Fundamental Human Rights and Freedoms.*" Madam Chairperson, it will be recalled that earlier on, the Assembly had referred to the Legal and Drafting Committee for the examination of the report, various queries relating to Chapter Five of the Draft Constitution, after it had passed through consideration stage in the Assembly. These queries it will be recalled, were contained in written comments by some Hon.

Members, in particular by Hon. Dan Nabudere and Hon. George Masika. They were pointing out the existing of certain conflicting provisions in this Chapter Five. The Legal and the Drafting Committee at its meeting held on the 17th May, thoroughly examined these queries and we had the benefit of the members who had moved these queries with us, and we came to the conclusion that these were mostly matters which could be properly raised at reconsideration stage of the proceedings of the Assembly. They were matters which were dealing with various articles, sometimes not related, but whose provisions would affect one another. And we feel, Madam Chairperson that, the best way then is to come up with a comprehensive report, just before reconsideration and then present the same to the Assembly for reconsideration. So, these will form part of the subject matter of various provisions and chapters which the Legal and Drafting Committee proposes to examine closely at the Consideration Stage and then bring them up just before the Reconsideration.

Never-the-less, there were a number of other important points which the Committee felt they should bring to the attention of the Assembly. We closely examined Article 59 - that is the Protection of Freedom of Conscience, Expression and Movement among other things, and we were satisfied that there was an omission which was left in this article namely, the guaranteeing of the right to petition and the right to demonstrate as had been done in various other recent constitutions. We were particularly impressed by the provisions in the Ghana Constitution and also in the Ethiopian Constitution where the right to petition and the right to demonstrate by citizens were guaranteed by the constitution. We therefore recommend that these guarantees should be incorporated in our new constitution even at this stage by replacing the present paragraph (d) of Clause (1) of Article 59 - that is of Chapter 5 - with a new paragraph (d). And we modelled this Madam Chairperson, on the formulation that we discovered in the Ethiopian Constitution which, as I see, is similar to that of Uganda. So, we propose a new paragraph (d) reading as follows that: "*every person shall have the right to assemble and demonstrate together with others peacefully and unarmed and to petition,*" should be included in the Constitution and it should be the subject of the debate and approval by this August Assembly.

Further, Madam Chairperson - incidentally, before I did that, although this is listed from the Ethiopian Constitution, the Ethiopian Article on the same matter does go a little further and I think for guiding the honourable Members, it is important to read what the Ethiopian provision says. It says that; *"every person has a right to assemble and to demonstrate together with others peaceful and unarmed and to petition. Reasonable procedures may be prescribed in the interest of public convenience relating to the allocation of open air meetings and route of movement of demonstrators or when such a meeting or a demonstration is in progress, for the protection of public morality and peace and democratic right."* In other words, the Ethiopian Constitution is much more detailed on that matter. But we left it out believing as we do, that this is really covered by the general law made by Parliament and we simply have to extract the right without going into details about procedures and the right to control those meetings. So, I thought that, I would give that explanation, Madam Chairperson.

Secondly, the Legal and Drafting Committee is of the opinion that certain of the human rights and freedoms which we have been guaranteed under the Constitution in Chapter Five should be made more truly inalienable and that a clear provision should be inserted in the constitution to the effect that they should never be delegated under any circumstances whatsoever. It will be recalled, Madam Chairperson, that an attempt by a number of delegates to insert such a clause was actually debated by the Assembly here but the amendment was not adopted because the Movers of that Motion had mixed rights which could be regarded as truly inalienable with others which have to be exercised subject to certain conditions.

Our advice is that if we can isolate those which everyone knows, that there can never be any circumstances for derogation, then this Assembly might be persuaded to include them in the Constitution so that they are not subject to the derogation clause which is contained - I think - in Article 71. These rights were identified as a right to fair hearing, freedom from slavery or servitude, freedom from torture, and I would like to suggest that torture should stand on its own. It is such an important item in itself that we should not perhaps join it with the others. So, it should be a fair hearing, freedom from slavery or servitude, freedom from

torture, and I think we should have freedom from cruel inhuman or degrading treatment or punishment. The idea is that even if you are in emergency, or indeed in a total war, we cannot conceive any circumstance where you should not be given a fair hearing if there should be a fair hearing. We cannot expect anybody to be under slavery or servitude even in those circumstance except in accordance with the Geneva Convention. Thirdly, under no circumstances should you be tortured or suffer cruel inhuman or degrading treatment or punishment even when you are detained under emergency or some other reason, or you are a prisoner in a situation of war.

So, we believe, Madam Chairperson, that this group of rights and freedoms which in other constitutions are guaranteed without alienation, we should also have them in our own constitution. We had a lengthy discussion about the last one, that is freedom from torture, inhuman or degrading treatment or punishment and the Members of the Committee and those who attended were concerned that notwithstanding that this provision has appeared in all our constitutions since independence, there is one form of torture and punishment which continues to disturb the nation. Namely, when the people take the law into their own hands so that when there are suspects, people who are suspected on specially robbery or thieving, they are beaten to death without the option of a fair trial. But more alarming is the practice since Colonial times where Policemen continue to arrest persons, suspect the persons, and beat them up before they are brought before the court. Indeed, it seems be common that whenever somebody cries thief and the Police are summoned, as soon as they have arrested somebody, they start beating him with batons, kicking him and so forth. And we believe that this is unconstitutional and it has been unconstitutional since 1962. Nevertheless, it seems that our law does nothing about this particular matter. So, we thought we would bring this to the attention of the Assembly to see whether anything can be done.

However, one of our Members pointed out quite rightly that you may put it in the constitution but this practice is based on training and discipline of the Police. And unless we can do so, then they will continue to mistreat suspects. Bearing in mind very, very clearly that our law says that a person is presumed to be innocent until he has been found guilty by a court of competent jurisdiction. So, we

believe Madam Chairperson that these are two important issues which the Constituent Assembly should revisit and hopefully, incorporate in the constitution. The Legal and Drafting Committee therefore has recommended that these matters be considered expressly so that we do not leave them out of our constitution.

There were two other matters, Madam Chairperson which were raised with the Committee but which we think are already adequately covered. One was a matter raised by Hon. Tiberio Atwoma which dealt with the rights of prisoners. He was particularly concerned that prisoners should have their rights enshrined in our new constitution. Having examined the subject, the Legal and Drafting Committee came to the conclusion that every prisoner has the same rights as citizens, except that of Movement. And that of Movement is restricted in accordance with provisions of the law because he has been sentenced to internment. Having said that, then they should be exercising their rights like anybody else within the confines of the punishment they have been given. For example, everyone has got the right to vote in the election. We do not have to provide specifically that prisoners shall have a right to vote because they are also citizens. So, this is not a matter of the constitution, it is a matter of administrative arrangement by the electoral commission to ensure that every Ugandan who has a right to vote and who is not prohibited by law can vote. Similarly, other rights of prisoners as to feeding in prison and so forth are covered by *The Prisons Act* and also by our accession to the Geneva Convention about prisoners of War and so forth. So, we do not need to specifically provide for it in the Constitution. Never-the-less, we did consider this matter.

The other issue I think was of detained persons which was raised by one honourable Member - I think Mathias Ngobi, but also we dealt with that, and we said that if we were to consider our recommendations in Clause (4) as I have enumerated, then obviously people who are detained, if they could be protected by the general provision of the Constitution as outlined, there would be no need for a separate provision for the persons. Madam Chairperson, I beg to report. I thank you.

**MR. ONEGI OBEL:** Thank you very much, Madam Chairperson. Madam Chairperson, before we move into talking about the recommendation

under (d), I would like to seek clarification either from you or from Chairman Hon. Kanyeihamba about maybe the grammar of saying "*assemble and demonstrate*". My problem there, Madam Chairperson, is whether the Assembling mentioned here is for the purpose of demonstration or the right to assemble separately whether for demonstration or not, and in which case, I think the issue - my mind could be cleared if we said "*assemble and to demonstrate*." So that assembling is a right on its own, not just for the purpose of demonstration. I thank you, Madam Chairperson. I seek to get clarification on that.

**PROF. KANYEIHAMBA:** I thank the Hon. Member for raising this issue. He is absolutely right. Indeed that is the original that we had in our previous enactment. I think there should have been a comma after "assemble", or we can recast it the way he has said. The right to "assemble and to demonstrate." That would make it clear. He is absolutely right that the two are disjuncted.

**MR. AWORI:** Point of clarification! Thank you, Madam Chairperson. I am seeking clarification and probably guidance. First of all, clarification from the Chairman, Hon. Kanyeihamba and probably guidance from the Chair, on this matter of a right to life. Whether it is too late to bring it up, or whether it can be incorporated at this stage?

**THE DEPUTY CHAIRMAN:** I propose that we clear (d) first so that we move systematically then we shall come to (4). Hon. Awori, I am proposing that we clear (1)(b) first, then we come down. Otherwise, if we mix them up, we may not do a good job. So, let us complete (1)(d). The Right to Assemble and Demonstrate. Then have it out of the way, then we go down.

**MR. PINTO:** Thank you, very much, Madam Chairperson. I wish first of all to thank the Legal and Drafting Committee for their work in bringing this amendment with these clarifications which I support. Madam Chairperson, it is proved in the past that police have used excessive measures and examples are many. The Makerere University intervention where police went to react to a peaceful demonstration of students and used excess force should be condemned. Police has been misused in intervening in the city strikes, at Railways, and they have been excessive. It is therefore important that these guarantees and freedoms, being improved

upon by the constitution, Madam Chairperson, is appropriate. I support this very strongly. Madam Chairperson, I am still to be clarified as to where the fundamental human rights and freedoms which are said to include hearing, slavery servitude, torture, cruel inhuman treatment or degrading treatment or punishment, should be included. Having had -  
(*Interruption*)

**THE DEPUTY CHAIRMAN:** Hon. Pinto, we said, let us complete one, pronounce ourselves, then we come to the other section.

**MR. PINTO:** I thank you for your guidance, Madam Chairperson. I support this amendment fully and I call upon fellow delegates to support these provisions. We have talked too much about human rights and guarantees, freedoms and liberties but we do not equalise our words with action. If individual groups of people who are dissatisfied with certain conditions, whether they be workers or students or other institutions, they should have a right to express their dissatisfaction, and they should be protected by this constitution to seek redress and justifiable collective action. I believe, in the past our words that we guarantee freedoms and liberties have not marked our attitude, and I am happy that this is coming to be part of our constitution, that every person shall have the right to assemble, demonstrate together with others peacefully, being unarmed and to petition, to seek redress for their grievances. I support the provision, Madam Chairperson. But I believe it needs a little bit of refining and re-drafting as it has been pointed out by others. Thank you, very much.

**MR. OMARA ATUBO:** Madam Chairperson, I also wish to add my voice to support this important provision in our constitution. The Chairman has mentioned that these provisions are there in the constitutions of Ethiopia and in Ghana. But Madam Chairperson, while recognising the importance of this provision in our constitution, I wish also to say that the mere existence of this provision does not automatically mean a democratic right of the people to demonstrate and to assemble. Because most of these will vary depending on the regime in power. Madam Chairperson, these are ideals and some of these ideals are important because they set standards irrespective of what regime is in power. Some of you may have heard that although this provision exists in the Ghana constitution, there was a demonstration - I think in Accra about three

weeks ago against the government with its economic policy of Value Added Tax. The economic policy of Ghana which is very similar to that of Uganda is beginning to have adverse social effects and people did take to the streets in Accra recently possibly in accordance with the Constitutional Provision which is similar to this one. But Madam Chairperson, as you have heard from the international press, at least five people were shot dead by government agents simply because the unarmed peaceful demonstration against the economic policy of Value Added Tax by the Government was not seen by the Government to be in their interest. Notwithstanding that the Ghana Constitution has this provision.

So, while supporting this provision in our constitution, I look at it as a very important ideal, a very important standard to right but without democratic culture. Like in Ghana or even in Ethiopia, this may prove meaningless. So, I do hope that this important provision will be backed up by the determination of Uganda to entrench not only in the constitution, but in our culture, the democratic values of tolerance of a government respecting lives, of the government itself respecting these important provisions of the constitution. I thank you, Madam Chairperson.

**MR. ABUMAYANJA:** Thank you, Madam Chairperson. Madam Chairperson, there is no doubt as to the importance of these rights to be protected or to be enforced. The problem as the Chairman was saying as I came in that, they have been in the constitution but they have been unaffected, they have remained a dead letter. And I will go short of discussing them thoroughly and try to suggest if there is anything we can do in this constitution to make their enforcement stronger and more meaningful.

There is this question of policemen arresting a person and beating him up in order to extract confessions. Madam Chairperson, this is forbidden by the constitution and there are legal provisions in the law. The provisions require that a person arrested should be taken before the courts within 24 hours of his arrest. Now, this continues to be just ignored by the Police. The people the other day were talking in another place. We read some person was detained in the police station and he found there people who had been in a police shell detained for 6 months. Now, since the courts cannot remand a

prisoner to a police shell, it means that, if a suspect has been found in a police station for 6 months, that must mean that, he has never been taken before the court.

**MR. OMARA ATUBO:** Point of information. Madam Chairperson, while I agree with the remarks of Hon. Abu Mayanja, I wish to inform him that, in the Police Statute which we passed last year, and Abu was then Attorney General and he really conceded to some very good provisions. One of the provisions is that, when a person is detained beyond 48 hours, because in the Police Statute we allowed 48 hours. If a person is detained beyond 48 hours, a person can apply to the magistrate, to have that person produced before the magistrate, or for the police to show cause why the person should not be released forthwith. Now, this made it much simpler for people to apply to courts to have people detained beyond 48 hours to be released. In the past, you were to go to High Court for *habeas corpus*. So, I think these provisions need to be publicised and the lawyers should take definitely serious note of it. Thank you.

**MR. ABU MAYANJA:** Madam Chairperson, that information is useful. The point really at this we did not note that, here we have made provisions which on the face of it appear adequate but which are not honoured. Which are honoured only by their being unregarded. So, how do we do? What do we do to ensure that, the law does not remain a dead letter. It is not really a question of putting-(inaudible)- it is a question of a hospital. Of course one method of this is to make the people aware of their rights. In most cases, they do not know; in many cases, they are afraid. But also, I think that, it may well be that, the time has come to make those people who break the law personally answerable. I am bringing a new concept. You see, Madam Chairperson, presently if a police officer goes and beats up a man and violates his human rights and so on, and if that man goes to the court, it is the government which will pay damages; that man will-(inaudible)- especially if he has got type of Ministers who think that, Policemen cannot do wrong. So, they continue, they say I do not mind, if the DP should ever come up, it is the tax payer who will pay, it is not me; they will go on. So I think may be we should make a provision that, where a police officer in contravention of the law, arrests a person and continues to arrest him beyond the statutorily provided period, he should in addition to whatever relieve that person may get from government, by way of damages, this person should

be made to suffer-(the policemen). And if we do not do this, I think this law will continue to be broken. Because these police are armed, they are feared, they are people in authority, they are operating in an predominately illiteratical society and they take advantage of those circumstances instead of being the custodians of the law. Which means protecting the law- protecting the people and enforcing the law, and ensuring the law that, the law is observed, they are trying to ensure that the law is flaunted. Madam Chairperson, another example which I may give is this law, the Inquest Act. I think it has now been forgotten that there is such a thing as an Inquest Act on our Statute Book. People continue to die in prisons, in detention, in whatever, in circumstances which make it obligatory and mandatory that, an Inquest should be held to establish the cause of their death. I tried again to draw attention or whatever, but of course when you are the chief, you have the government, you do not become the devil's advocate. Our people do not seem to know; there are no complaints; people die in prisons and their relatives get the bodies and they are happy to get the bodies and bury them. They do not know whether the people died because they were starved, they had no food; because they were big enough, because they were what, this is why there should be this Inquest. A public Inquest to determine why and what circumstances the person died. But for the last 20 years, I think; I have not heard. Infact the last Inquest that I know of was the one conducted by Mr. Katiti in the Nakulabye incident in 1964. Since that time, the Inquest Act has remained a dead letter.

**MR. PINTO:** Madam Chairperson, I want to go by the old saying that, the test in the food is in testing. I hear very well and I appreciate the words coming from Hon. Abu. But more than anybody else, Hon. Abu Mayanja has been a custodian of the law. Hon. Abu Mayanja as Attorney General for many years had many opportunities to put into practice such Inquests. Now, the law has always provided for this. I only want to see, how these good intentions are going to be put in practice? And I seek clarification from him. I as a lay person, and far removed from the administration of justice, how are we going to make sure that, what he is saying can be put into practice. When he is very well aware of the conditions and the law, and being a custodian

did not at the time put into practice this? How are we going to ensure that what he is saying is going to be applied? He more than anybody else in Uganda is going to lead us in this conclusion. I appreciate the clarification, Madam Chairperson.

**PROF. S. KAJUBI:** Point of order! Madam Chairperson, Hon. Abu Mayanja is debating here as a delegate. Is Hon. Pinto in order to interrupt him and prevent the words of wisdom which may come even after the event to prevent him from speaking?

**THE DEPUTY CHAIRMAN:** Hon. Senteza, he did not prevent him from speaking. You as a professor you know that referencing is quite in order.

**MR. ABU MAYANJA:** Madam Chairperson, it has of course been known that delegates of this House have been elevated for places and I can see people trying to make - (*laughter*) - maybe I could have - First all, Hon. Pinto has not been Attorney General. When people die in prisons, the Attorney General is not informed. When people die in police custody, if they do, the Attorney General is not informed. Even the prosecution services, the Attorney General's hands are prevalently hampered because the function of investigating is within another Ministry, and the prosecution is in another ministry. In most cases, the Attorney General gets to know about prosecutions when they have already been made; sometimes without sufficient evidence, perhaps which the Attorney General would not have sanctioned. But the Hon. Pinto may also know that the Committee on Legal Affairs in the NRC has recommended that the department of the DPP and the Department of the CID should be unified and put under one command and that this was resisted immediately that recommendation was made. So, blaming somebody who was a former Attorney General and - but I have not come here as the other Attorney General, but Delegate of Busujju. It is not proper -

**PROF. KANYEIHAMBA:** Point of information! Thank you, Madam Chairperson. I wanted to inform Hon. Abu Mayanja that, that recommendation which was made in the NRC but was resisted, has now become part of the constitution. When it was argued here, we have now put it that the CID and the office of the DPP shall be under one jurisdiction. So, that now has been achieved.

**MR. ABU MAYANJA:** That is good. But Madam Chairperson, the point that I was making is that the ignorance of our people about their legal rights, their constitutional rights which enables some officers of government to take advantage - they take advantage of that ignorance and they violate their human rights. Now therefore, I am recommending, that the time perhaps has come for this assembly to provide where a citizen's human rights or really a person's human rights have been violated in contravention of clear legal provisions like - I am not going to go into all these but I am talking now specifically - I am referring myself to this, the time within which to take an arrested person before the court. That a person who detains this person beyond the 48 hours should be answerable personally. Because to punish the government, it means you are punishing the tax payer, it means all of us go and pay for the fault of this one person and he is not corrected. So, that is what I would like to recommend on that particular point.

**DR. MUGYENYI:** Point of clarification! Thank you very much, Madam Chairperson. Madam Chairperson, I want to seek clarification from Hon. Mayanja, just clarifying my mind, how this provision will be applied if a police officer arrests some suspect and he is, say, kept in custody over the time prescribed and this officer is not the one responsible for prosecuting this man and maybe sometimes he goes off duty when this man is supposed to be prosecuted - to be taken to court, and time elapses. Who in that circumstance is going to be held personally responsible, the person who arrested, the one who took over duty or who was supposed to prosecute? I just want clarification from Hon. Abu Mayanja.

**THE DEPUTY CHAIRMAN:** Hon. Mugenyi, before you ask for clarification, I do not know whether Hon. Mayanja has moved a Motion.

**DR. MUGYENYI:** He was debating.

**THE DEPUTY CHAIRPERSON:** Then if you have not known - we have not moved to the Motion, what are we debating?

**MR. ABU MAYANJA:** Madam Chairperson, I thought I was making a contribution to the presentation made by the Chairman of the Legal and Drafting Committee, like all other delegates who spoke before me.

**THE DEPUTY CHAIRMAN:** Yah, but the others were just either supporting - but you, you were adding a whole phrase which you have not said you are moving, so that it is seconded. Otherwise, if it was just a statement, then we do not waste time, we take note and then we pronounce ourselves on (1)(b).

**MR. ABU MAYANJA:** Madam Chairperson, it would appear that this being a provision in a statute, it would have to be dealt with by making the provisions perhaps in that statute. So, I will not move an amendment that it be constitutionalised. I thank you.

**THE DEPUTY CHAIRMAN:** Thank you, very much. Hon. Delegates, therefore let us talk on what is in (1)(b) and take note of Hon. Mayanja's submission rather than trying to say you are right or wrong. You have taken note of his submission.

**MR. RUZINDANA:** Thank you, Madam Chairperson. Madam Chairperson, I do support the proposal of the Legal and Drafting committee that we should add something about the right to demonstrate and the right to petition. But Madam Chairperson, I would like to suggest to the Committee that in so doing, we should not also over crowd one clause with so many rights. I do want to suggest to the Committee that they accept that we separate the right to assemble peacefully and have it as a clause on its own, and then have another clause giving the right to demonstrate and to petition so that we do not over crowd one article with so many rights and confuse them. Because as it is now, it looks as if one assembles for the purpose of demonstrating. And really, this is not the intention, they do not intend to abolish the right to assemble peacefully and these are separate rights, you do not have to assemble all the time in order to demonstrate. And neither do you have to demonstrate with a view to petitioning. You may demonstrate without a petition. But usually of course a petition comes after a demonstration. And these can be rightly put together. But the right to assemble is a very important right in its own and should not be mixed up with demonstration so that later, in application there is confusion. At a later stage, the application might be confused and therefore, I do want to move, Madam Chairperson and hope that the Committee will agree that (d) should read; "*assemble peacefully*" and then we have an (e) providing for "*the right to demonstrate together with others peacefully and unarmed and also to petition.*" I beg to move Madam Chairper-

**PROF. KANYEIHAMBA:** Madam Chairperson, I believe that Hon. Ruzindana must have to try to relate because I had already conceded that point and explained that in fact the right to assemble was a separate right from the right to demonstrate and from the right to petition. And rather, this report was put up very hurriedly by the technical committee. We had not had time to read it and therefore, I would ask that the assembly approves the principle but these are to be properly rewarded to fall in line with what we have already approved. I thank you, Madam Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Ruzindana, actually this had been done through punctuation. So we have to agree whether we go by the punctuation or we separate the two.

**MR. RUZINDANA:** Madam Chairperson, first of all, I was not late. I wish to correct that the report was given when I was here, I reported and wrote in the register before 9.00 a.m. and therefore, definitely it has nothing to do with my being late. But secondly, Madam Chairperson, my contribution relates to having two clauses, not a punctuation mark. And this is completely different from having a punctuation mark, madam Chairperson. I do think in other words I am opposing abolition of the right to assemble peacefully as a right in its own, and I am supporting the insertion of a new right to demonstrate and to petition. These are separate Madam Chairperson, and related to the time of my arrival here.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, as Hon. Kanyeihamba in principle has no problem, I think we should not waste time on that.

**DR. KABAYO:** Thank you, Madam Chairperson. I had wanted to agree with the Chairman of the Committee that some of these matters could probably be raised at the reconsideration stage of the proceedings of this Assemble. In this frame of reference, I had not yet observed that there are three areas in Chapter five which concern the matter under discussion now. And the Committee seems to have concentrated only on Article 59. And there are two other areas, which I had hoped would be included which have the same direct meaning or indirect meaning, particularly on page 15 of the report which is Article 67, a new Article 67 which if I can read it - I wanted to seek clarification from the Chairman, whether this had a meaning that

implies what the amendment that is being sought. Article 67 Clause 2 says; and we have already passed. It says; "Every Ugandan has a right to participate in peaceful civic activities, to influence the policies of Government through civic organisations." This may not directly, imply demonstrations, but it has an aspect of that meaning. And I wondered whether this was considered when they were proposing the amendment.

**PROF. KANYEIHAMBA:** As the Hon. Kabayo has read, the import of this clause is to influence government policies peacefully whereas the import of this one is a protest against any action of government or anyone which the population disapproves. So, they are slightly different. Never-the-less is right that, before reconsideration, the whole import of every Article and Clause shall be considered very clearly, by the Legal and Drafting Committee, and if there are any anomalies, and this one obviously has pointed out; we shall propose how they should be ironed out. So, he is right in saying that, this is a matter that will come up before reconsideration to the Legal and Drafting Committee. I thank you.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, I think we all agree in principle that, include Article 59; so I put the question, that 1(d) does stand part of this constitution.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** 1 (d) of Article 59, does stand part of this Constitution. Now, we move on to the second part in 4; and I had promised Hon. Pinto to give his comments, on 4.

**HON. PINTO:** Madam Chairperson, I have submitted partly what I would say in this particular contribution. Hon. Mayanja has done it more than justice. My intentions and contributions I think are well known here; that, I would like to see this fundamental human rights and freedoms included in the Constitution and that, ask the Legal and Drafting Committee, to come out with a formulation which we could support so that, fair hearing, is guaranteed, slavery servitude is abolished or cannot be practiced. The torture, cruel inhuman or degrading treatment of punishment is restricted and as has been correctly put by Hon. Mayanja, that if police who are given the opportunity, the duties to discharge, to protect human rights, when they take in prisoners, and subject them to such inhuman treatment that

they should individually be held accountable. I would like to see a provision of this kind, in the Constitution. It may not be possible to get satisfaction, from the present legal provisions, because while that is in the statute, we know very well that, these tortures are continuing. I beg to submit, Madam Chairperson.

**MRS. MWONDHA:** Thank you, very much, Chairperson. Madam Chairperson, I am seeking to indulgency of the Chairman of the Legal and Drafting Committee, of course I think I should seek his indulgency after thanking him for having come up with these good recommendations. But in as far as recommendation pertaining to part (A) of number 4 regarding fair hearing, I am wondering how practical this recommendation can be. Because they said that, they should not be derogated from under any circumstances, even in a state of emergency. Now, I am wondering, Madam Chairperson, how practical this one can be. Because unless we mean to say that, the state of emergency would be just state staged. In otherwords, it would be deliberate and not dictated by circumstances. How fair hearing cannot be derogated from. Because this is a process, which involves sitting of the courts and then investigations of the matter, how practical this one can be. That is the clarification, I am seeking from the Chairman. Thank you.

**PROF. KANYEIHAMBA:** Thank you, Madam Chairperson. First of all, I would like to draw the attention of Hon. Members, that this is part of our recommendation, does not spell out those rights. But those rights are already spelt out. For example, in Clause 50, 54, and 55. So, if people want to know the extent of the rights which we were saying should be guaranteed as alienable, they should go to those clauses. Now, responding to Hon. Mwondha's point, we are saying whether it is in emergency or state of war, whenever there is an opportunity to be heard or things being equal, that hearing should be fair. That is all, that we are saying, should be guaranteed. We are not guaranteeing investigations, or that people will be tried on time or whatever; but when the opportunity comes, for a fair hearing, hearing is actually when proceedings are taking place, then there should be a fairness of that hearing. We cannot concieve any circumstances, even during emergency when somebody is brought

before a court or a Court Martial and then you say, because of the situations, the hearing should be unfair. I want you to visualise that. Therefore, we are only guaranteeing a fair hearing, all things being equal.

**MR. ABU MAYANJA:** Madam Chairperson, I think the problem which is facing my daughter there and myself would be - since during the state of emergency people can be detained without a trial, how do you ensure on the one hand that the right to a fair hearing cannot be derogated from even under emergency? But on the other hand, you allow the state to detain people who have not been judged criminally guilty by the court? In other words, how does detention without trial square with this, making the right to a fair hearing secret and not derogatory in the constitution. I would like to be clarified on that?

**THE DEPUTY CHAIRMAN:** Okay, Hon. Kanyeihamba, let us collect them, and then you answer.

**MR. OMARA ATUBO:** Madam Chairperson, Hon. Kanyeihamba mentioned a point which I think should not escape the mind of this House. That under the state of emergency, a person would be detained without trial. But if he is to be tried, then that trial should be fair. I think this is very good. The crux of the matter, in my view is that, that is already a serious violation of somebody's right. And I am just wondering why the Committee did not tackle the fundamental issue. The issue whether a person should ever even under a state of emergency, be detained without trial. Madam Chairperson, Article 72 which I think we have already passed says that; *"the existence of a state of emergency shall not affect the enjoyment of the right to human dignity, life or fair trial as guaranteed by this Constitution."* One can look at this Article 72 as a residual right under a State of Emergency; something which remains after all these rights have been infringed upon because a state of emergency exists, somebody can arrest you, detain you and if he does not bring you before the court, you have no protection.

If you look at Article 71 and so on, it is very clear within how many hours we should be informed why you have been detained. Originally, the Odoki Commission had proposed 30 days, but now it had been reduced by this House to seven days for **gazetting your name - just gazetting your name that**

you have been detained but really not protecting you from that detention. So, my worry is that the Committee should have gone further to examine seriously because this had a very serious debate. I remember I spoke at length and Hon. Kagimu spoke at length but it was passed that the State can detain you in a statement of emergency and without trial. But I would have thought that the Committee should have gone really further not to provide for a fair trial, yet this fair trial is not available under certain circumstance. How therefore, can you argue that certain rights cannot be derogated? This is really my interest, Madam Chairperson. Thank you.

**MR. WACHA:** Thank you, Madam. Madam Chairman, Hon. Kanyeihamba reported that certain queries of a legal nature were raised by Hon. Nabudere which the Committee decided to put off until the stage when we are going to polish contradictions which appear in the constitution. This was one of them. But for the time being, Madam, I want to draw the attention of the House to the general derogation clause which was passed by this House under Article 72. Which included wordings that the clause would apply in circumstances provided for under this Constitution. Now circumstances provided for under this constitution would include detention without trial during a State of Emergency. For the time being therefore, it would be legal and there will be no contradiction whatsoever for that provision to be retained in the Constitution. That is why the Committee felt that even during the State of Emergency, there should be certain rights which should not be derogated under the general derogation clause. That was the thinking of the Committee.

**MR. WASSWA LULE:** Thank you very much, Madam Chairperson. I am a bit perturbed by the explanation by Hon. Wacha about the general derogation clause. Maybe I got it wrong. My understanding of the reference to detention without trial in the clause is that public interest would not be - it is a limitation to the interpretation of public interest in that, public interest would not include the detention without trial. Perhaps if he could clarify that point and perhaps later on I can contribute to this debate but I am a bit concerned about the interpretation.

**MR. BEN WACHA:** It is true that public interest does not include detention without trial under nor-

mal circumstances, but you will also recall Madam and Hon. Wasswa Lule that this House did provide for detention without trial under a State of Emergency. Now that Clause 72 which is a general derogation clause also provided for that, certain circumstances provided for under the Constitution would excuse derogations. If Members would refer to the actual wordings of Article 72, they would understand what I am talking about. That is what the Committee dealt with and that is the circumstances under which the Committee felt that other rights which should not be derogated should be withdrawn from the confines of Article 72 of the Constitution.

**MR. AGGREY AWORI:** Madam Chairperson, at the beginning of the report, I sought our indulgence to get clarification from Hon. Kanyeihamba or from your own Chair on the matter of the right to life and procreation. We said that question should come under (4). I am reviving it again, the right to procreation and life. Is this one of the conditions or one of the guarantees that can be conditional under fundamental human rights? In other words, is the right to life and procreation is conditional?

**PROF. KANYEIHAMBA:** Thank you Madam Chairperson. I am grateful for Hon. Ben Wacha's explanation because I thought that it really takes us further to understand what this whole debate is about. First of all, we accepted that issues like detention without trial in emergency and all the rights that you want to accord to Ugandan citizens, you have already established them. The debate is finished, we voted on them, they are now part and parcel of the constitution. So, some people have been trying to re-open those debates, for example the debate on detention and you come to life as well. So the only recommendation we were making is that those rights which you have already prescribed in the Constitution which were not debated at all, are there any of those rights which we can think are inalienable, which can be guaranteed forever? That is really the only question we were dealing with. It is not our intention to reopen the matters which we have already settled in your wisdom.

Having said that, I wanted to remind Hon. Awori that one of the reasons why we earlier lost the amendment on clauses which should not be subjected to derogation was because the movers mixed those which are known as inalienable with those which are alienable. Let us look at the right to life.

We have already passed a clause that in fact death sentence is acceptable in Uganda and yet it was a hot issue. But nevertheless, by a majority, we decided that death sentence is still a viable punishment in Uganda. That itself is a derogation from the right to life. There are people who were arguing that I do not know what we provided about or there maybe circumstances because of health when a woman could be aborted for example for health reasons. That is a derogation from life and therefore, there is no way you can include the right to life as one of those which is inalienable. It would be a contradiction in terms. So what the Legal Committee did was to enumerate those rights which are inalienable both by what you have already passed and by international understanding and by the treaties that we have signed including the *UN Universal Declaration of Human Rights* and the *OAU Charter for Human and Peoples Rights*. It is in light of those that you have these very selected few rights where logically, legally and otherwise and constitutionally, there are no conceivable circumstances when you can derogate from them.

When we were debating this Madam Chairperson, one Member brought the idea that the right to equality should be one of these rights. But we pointed out that we have already written in our Constitution that there will be affirmative action in favour of women which in itself is a derogation from the principle of equality. There were arguments for and against that but ultimately, we reluctantly refused to include the right to equality as one of those rights which is absolute. So it is for that reason that the right to life - you will recall also Madam Chairperson that the movers of the original motion had wanted us to include the freedom of religion and yet when we came to argue about it, we know that some of the religions are the cause of human misery and there may be times when certain actions of religious beliefs will have to be restrained by the State and therefore, you cannot say that all religions and sects are immune to restriction and therefore, they should be inalienable. So it is for that reason that freedom from religion and conscience was removed from Rights. I hope that Hon. Awori is happy with that.

**THE DEPUTY CHAIRMAN:** He is asking only on procreation.

**PROF. KANYEIHAMBA:** The right to procreation, again I believe that in the Constitution, I cannot recall the clause but we said that people who

marry have a right to procreate children and to determine the number of children that they have. We put it there. That, can it be inalienable? I think you can conceive circumstances whether it may not at one time. I want to remind Hon. Members for example that in certain countries, there is legal requirement for family planning. In the case of China and in the case of India because of the explosion in the population. A time may come when the community may decide that it is not wise to have unlimited families and therefore, there should be some advice on that and ultimately, there might have to be some law. So we have put it in as a fundamental right but we were not convinced that it is inalienable.

**MR. ELYAU:** Thank you Madam Chairperson. I thank the Committee and the Chairman for his submission. But I wanted clarification over these issues. I want to know where this one falls. Normally, during the insurgency in all areas, when you are arrested, you are arrested without knowing what charges you are being taken for. People are taken to custody, overcrowded and that is why we have lost a lot of our citizens. I wanted to find out from the Chairman, where does this fall? Does it fall under torture or cruelty? Because this has been really one of the most serious part of our issue on fundamental rights because persons are put in a small place or container in hundreds so that they have no time even to defend themselves. May I find out where this falls. Is it in the torture or cruelty?

Secondly Madam Chairperson, we are beginning to get threatened in this House. I have a note in my pigeon hole which tells me that the direction where I should go in Kampala to Jinja road, turn on the right to Kyetume, turn to Katosi and then they ask me, do you have transport? And then they say will you attend the function. Please indicate. But the person who is writing to us does not indicate his name and we are really worried. Can I be clarified on this also?

**THE DEPUTY CHAIRMAN:** Okay, if that person is there, that person will answer.

**MR. ELYAU:** No, there is no name Madam.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, let us be orderly. Okay, that one is a small one. Let me collect them and then we shall see who will answer.

**MR. NGOBI:** Thank you very much Madam Chairperson. I have problems with some of what is now being recommended just as Mrs. Mwendha pointed out on (a). I also would like to point out or seek clarification from the Chairman of the Legal and Drafting Committee that although or in spite of what was passed by this Assembly as far as detention without trial is concerned, the Committee in its wisdom has seen that it is necessary, maybe, to review our stand and has already identified certain rights which are not inalienable. I would like to seek clarification as to whether the Committee will be able or will have the freedom to see that the question of detention without trial is very basic in what they recommend as fair hearing. Because you cannot have a fair hearing if you are detained without trial. It is during the trial that you will be able to hear exactly what you are being charged with because the question of detaining people or arresting them is really to stop them from doing something that is not good for society. You start from criminal offenses, somebody is a thief, he is arrested and charged and then convicted so that he stops stealing other people's property. Now, in case of breaking peace or security, it should be possible for government to say that this particular individual is doing action "A" which is posing insecurity.

So, there is no need to fear to delete this question of detention without trial because of emergency regulations. It should be possible for the government to say that so and so is a bad person in society because he is doing action "X." So what I am pleading is that this Assembly should give leeway to the Committee to re-examine the basic articles that we have passed which in fact is preventing them from giving the full satisfaction to (a) which is fair hearing. I recall very well when we were debating this matter, Article 53 - I am quoting from the original Draft - Article 53 Clause (7). We did cross out the words; "*except in a case of state of emergency as provided by this constitution*". But when you proceed, you find that in subsequent articles, we did in fact take away that right and I think since it is a question of seeing what should be done, what is fair, we should clear our minds very well that there are no circumstances under a State of Emergency when somebody should be detained without stating why you are detaining him. It is not enough to say because it is a state of emergency. One should be able to state exactly why he is detained. In other words, he is treated like other people.

So the question of detention without trial is very basic and I think we should all reconsider the position that we took in Article 71 and in Article 129 Clause (8). All these articles are really reinstating what we think is abhorrent in a democratic society. So what I am seeking, Madam Chairperson, is first of all from the Chairman of the Legal and Drafting Committee and also maybe from you as Chairperson that this matter is so basic that we cannot strictly say that we are doing a fair and honest opinion by passing Article 4(a) - fair hearing - without tackling this basic problem. That is my comment. Many people here including myself are speaking from experience, we have suffered from detention without trial. So we know exactly what we are talking about. And that is my prayer.

**THE DEPUTY CHAIRMAN:** Thank you very much. Hon. Ngobi. But those provisions which we have already pronounced ourselves on will wait until reconsideration stage. That is why they were not handled. That is where Hon. Kanyeihamba started when he was making his presentation but your contribution perhaps is just reinforcing the specific area where we may need to focus and I think the Legal and Drafting Committee has taken note.

**MR. KWERONDA RUHEMBA:** I thank you Madam Chairperson. I assume Madam Chairperson, that Hon. Kanyeihamba and his Committee think that even before the state of emergency, that all is rosy. They seem to be worried about emergency but me, I believe that even before emergency, things are not rosy for any would be arrested or any person who is arrested. Fair hearing Madam Chairperson, comes long after many of our people have suffered. People are arrested in villages, they are taken to either the gombolola, from the gombolola to county headquarters where there maybe a Police unit and these people, depending on the nature of the allegation, they may be in these places for more than a month. The reasons given when you ask, you are told that the magistrate comes once a month or even once in two months at this county court.

Secondly Madam Chairperson, some of these people arrested may be facing criminal charges and they will be told that they cannot go to court immediately within 48 hours as Article 53 in the Draft provides because the Magistrate has no jurisdiction over them, that this man or woman will have

to go and face the Chief Magistrate. The Chief Magistrate may be sitting at the district and in the case of my district, he does not even sit at the district. He sits at Mbarara and mine being a new district, Ntungamo, the Chief Magistrate does not even come to this district and prisoners have to be taken to Mbarara. The other reason that this man may linger in this prison is due to some problems like transport costs. The man may be at the county prison, police cell awaiting some transport to come from say, Mbarara and take prisoners who cannot be tried by Grade Two Magistrates. So this "fair hearing" the Committee is talking about, it is only in books but in reality and in practice, our people are really suffering, suffering to the extent that they are even beaten, suffering to the extent that even when they are waiting for this trial, they can do some odd jobs, some of them very humiliating and some of them may have to pay some money and quite a lot of it in order to be let out to breathe some fresh air.

So Madam Chairperson, this "fair hearing" we are talking about comes much longer after our people have suffered. And in (b), they are providing for "*freedom from slavery and servitude*" and on this one, I need some clarification. What do they mean by servitude, is it to serve or to do some odd jobs when you are in prison? What do they mean really by this? Because if that is the case, even under situations which are not emergency situations, I have seen some people going and they pay the Prison Warden or Prison Master, whatever he is, and these people are taken miles away to go and do chores which may be humiliating to some of our people. Are they objects for hire to go and do some dirty jobs for some people? What is more humiliating than that if that is not servitude, if that is not slavery? So I think Madam Chairperson, in our Prisons today, people are subjected to what I would call servitude. I think they are being subjected to slavery and servitude let alone emergencies which we are talking about and imagining to come in future.

Then when it comes to (c); I would like to inform the Chairman of this Legal and Drafting Committee that actually, torture is rampant in our Prisons, cruelty is rampant and inhuman and degradation of our people is rampant. I do not know why Hon. Abu Mayanja abandoned what I thought was going to be an amendment but I think I agree with him that if a person tortures somebody in a cell, if he is cruel to somebody, if he subjects a prisoner to slavery and

servitude, that person should be held personally responsible for those acts and that person should be given some form of punishment himself. And I would like to have it provided for in this Constitution, that if a policeman beats to the extent that you eye gets out, may be he should also lose his eye.

**MR. NGOBI:** Moses's law, an eye for an eye.

**MR. KWERONDA RUHEMBA:** Okey, that is too harsh Madam Chairperson but what I am trying to imply is that if you are beaten in a cell by an agent of the government like a policeman, this man should be held responsible and the government which employs him also should be held responsible because I believe before you are made a policeman, you are trained in matters of either administering prisoners, or in matters of arresting and keeping these prisoners in a safe custody. But if that teaching is to the extent that it teaches you to beat people, it teaches you to torture people, then the teaching is wrong and whoever has administered that teaching should be responsible and in this case really, government should also not be exonerated because this cruelty in our cells looks as if it is institutionalised and condoned and accepted by governments we have had from 1962 I think even up to today. It should be incumbent on the government to reorient these policemen. If NRA has attempted to do it in respect of soldiers not to shoot anyhow, not to kill civilians anyhow like it used to be through orientation courses, I think policemen also should be oriented, they should have refresher courses to address some of the human rights issues that we are actually talking about. Otherwise our people dehumanised when they have not even been tried, when they have been arrested on suspicion, on mere suspicion that they found some goat skin in your compound, because somebody else had lost a goat somewhere. Even if you had slaughtered your own goat, you are taken, beaten, tortured on mere suspicion that you have stolen a goat. You may lose an eye, you may lose teeth, you may lose a limb because you are beaten by policemen and before this fair hearing we are talking about and even when it comes to fair hearing, I do not know actually where they get fair hearing! Because I have known people who have committed some- who are suspected to have committed some minor cases and they have been on the road from say Rwashamaire where I come from to Mbarara and they are being told everyday, you come this day, one year, two years, you are spending to get this fair hearing which does not come your way

because of inadequacy of the courts to have sufficient resources or the magistrate being one who can handle some of these cases and our people really suffer and I would like the Chairman of the Legal and Drafting Committee to consider bringing in some amendment to address this scenario that I have just talked about; spending so much time, many months in the police prison cell at the county, taking so much time before they listen to you, being tortured and beaten and actually being hired without being paid from a certain prison to go so many miles and do some job for somebody who has paid prison warders. I thank you very much Madam Chairperson.

**BRIG. KYALIGONZA:** I thank you very much Madam Chairperson. I am just seeking clarification from the Chairman Hon. Kanyeihamba. I am getting slightly concerned about the wholesale usage of these words human rights and freedoms which are supposed to be guaranteed. Because these human rights and freedoms sometimes are relative. It depends in what circumstance where one would enjoy this human right and freedom. I was looking at an example which may sound naive Madam Chairperson but with your permission, I would like to highlight it before the Hon. Members. If it is, then they will bear with me. Madam Chairperson, I am a tourist in Zaire and in one of the states, there is an emergency. This time, the emergency is not military emergency or security emergency. It is to do with hazard or natural disasters. Today we have *ebola* in one of the places in Zaire. Now this *ebola*, the government of Zaire has put an emergency regulation, has declared or put that place under emergency. But I have my freedoms and my human rights. I do not want to be infected. I fell I am healthy, I have no *ebola* on me and I want to run away as quickly as possible before I am infected. But then because the emergency law is put in place. I am restricted to move away. Now how does the Hon. Member, supposing it was here, how would he address himself to that situation? And two, I am also looking at human rights in one of the places emergency regulation has also been declared. A state of emergency has been declared and it is in the interest of the people. There is shooting all over but the person who is responsible for the shooting is arrested and this person, where he is arrested from, the people responsible for implementing or putting this arrest in effect have no means of securely holding this person.

They use a rope to tie him so that he does not run away. Now when he is tied, still there is a human right violation of it in *kandoya* and it depends on the style which this person would be tied. Now I was only wanting to get some clarification from the Chairman, what he thinks in such a situation because it should not always be on the aggrieved. It could also be on the non-aggrieved because somebody who is also implementing this kind of situation, how would he be treated because he is also qualified to enjoy the human rights and not to inconvenience other people's rights?

**MR. OBUA OTOA:** Thank you, Madam Chairperson. Madam Chairperson, I have no serious quarrel with the recommendation of the Legal and Drafting Committee on the matter under discussion. But listening to the debate, certain issues are coming which I would like clarified. Now I want to concentrate particularly on this business of liability when somebody is locked up in a police cell and so on and so forth, his human right is violated and he is subjected to torture, inhuman and degrading treatment and so on and so forth. I have heard Hon. Abu Mayanja saying that whoever does this sort of thing, or a policeman who is responsible for the violation of somebody's right should be personally responsible. That sentiment was also repeated by Hon. Pinto and again by Hon. Kweronda Ruhemba. Madam Chairperson, while I am not a lawyer, I have some exposure to certain legal concepts. One of which I think goes under the name vicarious liability. I think the lawyers here know very well what that means and even philosophers know what that means and that is that if someone is in the service of another and in the course of the execution of his duties, he commits some offence or does something to somebody else or injures another person, then whoever is the employer of that person is vicariously liable. I do not know whether those who are arguing that the policeman who tortures somebody or any officer of the law who commits certain violations against some human being should be personally liable are being practical. I do not know whether that argument is practical and I do not know whether the lawyers, some of the very renowned lawyers who are arguing like this just want the concept of vicarious liability thrown overboard. I want that to be considered and I wanted it clarified and even the fact that the policeman who commits such an offence against somebody, very often in certain types of regimes, he may be doing so on the instruction of whoever their employer is. How are

you going to say that the policeman is doing it out of his own motivation? Or maybe if he is told to pick up somebody over the weekend so that he has no access to the court and so on and so forth, he is doing it as the person responsible. These occurrences have been known to happen. Madam Chairperson, I think we should think about that matter rather more carefully, otherwise, on the whole, I quite agree with the entrenchment of these fundamental rights or rather the suggestion that they should not be derogated from under even a state of emergency. Madam Chairperson, I would like the Chairman of the Legal and Drafting Committee to address the matter of vicarious liability while he is responding to queries raised about his report. I thank you Madam Chairperson.

**MR. OKALEBO:** Thank you Madam Chairperson. Let me start by just answering back what has been said lastly. The principle of vicarious liability has its own rules and principles of application and the methods of resting responsibility where it should actually lie. It is not automatic that when an employee does something bad, it is necessary for the employer to be vicariously liable. There is also the aspect of the wrong doer doing it not in the interests of the employer but doing it on his frolic. So, that one should also be noted. Now Madam Chairperson, discussing about Clause 4(a), let us look at the general position where all things are right. One, you begin with suspicion against an individual for having committed or for being about to commit an offence. This suspicion will lead to an arrest of that person and then the arrest may lead to a detention and then detention will lead to charging this person on finding that the facts as presented appear to make up a prima facie case to take this person to a court of law. And then when this is done, the person is taken to court and a plea is taken. He may plead guilty or not guilty and there, the normal hearing and determination of the suit or case is to be done expeditiously. That is the idea behind.

Now this one as contained in part (a) creates an exception regarding situations where there is a state of emergency. Here, Madam Chairperson, the use of the expression "fair trial" is relative. It is relative in the sense that those who detain people during an emergency should not just forget them there because there is an emergency and an emergency does not blow as a blizzard full time. Even rain may reduce in speed at certain times. So even madness of a person, even that person may have some sane

interlude. So even here, a state of emergency is not expressly of the same degree full time. Where there is relaxation of that emergency, this is what it says; give this person what is due to him, give him the chance to be heard, give him a fair trial and expedite it where chance can allow. And the idea of emphasizing on fair trial is that during an emergency, there may be situations where the intended witnesses, say prosecution witnesses, have been dispersed by the emergency, it is very difficult to trace them, it is even difficult to summon them, it is even difficult for them to get transport to go to Court. But when there is a chance to trace and ascertain where these persons are, please, do not sit and use the excuse of emergency. Go ahead and call these persons and take them to court for the hearing to be fair. So here, fairness means justice being done without undue delay. This position only goes maybe to give allowance to matters which may appear to go against the principle of fair trial in the ordinary circumstances. So actually the formulation of the committee in principle is a good one and I do support it.

Then I also go ahead Madam Chairperson, to say that I go along with those who say - it is unfortunate Hon. Abu Mayanja abandoned his idea but the position is, when we are dealing with fairness of persons, there is unfairness which is sometimes done by some of the agencies concerned, not even for the good of the government, not even for the administration of justice but maybe for their own good or for the good of those who are complaining. There are instances when you find that injustice is also administered to suspects at the instigation of the complainants. This one is very rampant in our society and that much we know because of the complainants, it is only justice to see that the suspect is detained and do not allow him to be free. They say I took this man to police and immediately I left the police, the man followed me. His circulation is meant to be kept out. That is where people see justice. So when this one is done, a person responsible for this person who is arrested actually acts to the interest of a complainant and not the accused and not even the State. I do not see why this person should be let go free. I do not see how this man should sit and hide behind the curtains of vicarious liability. These are people who should be pointed at by the constitution. But okay, be it a policeman, let him do the duties of a policeman as stated in the *Police Act* and as you are given the authority to do generally but in doing so, should it be seen that you are doing these things against

general accepted principles, then you will be answerable personally. This is the way Madam Chairperson, I believe people will be put on the alert to see that they do not relax and create injustice to others to satisfy themselves. Thank you Madam Chairperson.

**MR. OKWAKOL:** I thank you Madam Chairperson. Madam Chairperson, before I make some substantial contribution, I seek some slight clarification from the Chairman of Legal and Drafting committee Hon. Kanyeihamba. This issue of entrenching some of the rights so that they are more and truly inalienable is a good idea but the way it is framed in (4) gives rise to some uncertainty Madam Chairperson. It is stated in the constitution that these inalienable rights should not be derogated under any circumstances even in a state of emergency. Then it goes on to state, these fundamental human rights and freedoms include - whereas fair hearing is obviously a human right, it goes on to state slavery and servitude and torture fall in human degrading community. There must be something missing Madam Chairperson, in the construction of that, otherwise, on the face of it, someone would think that slavery and servitude are a human right. Now if I could get the clarification on that maybe before I go to substantive contribution Madam Chairperson.

**PROF. KANYEIHAMBA:** I thank you, Madam Chairperson. Really, as I said, the idea of introducing this is for us as a principle to see whether these rights which cover these areas should be guaranteed absolutely but I had already pointed out - I believe that Hon. Okwakol was not here - that the way the rights about fair hearing or freedom from slavery or servitude or from torture is as already approved by the Assembly in the plenary and it is of course incorporated in the chapter on human rights. If you look for example at Clause 55, precisely that is what we wanted to be guaranteed. It says; "*no person shall be held in slavery or no person shall be required to perform forced labour*" and then you have clause three; "*for the purposes of this article, forced labour does not include...*" then it enumerates. It is that right, that freedom which is in 55 that we are referring to here. This is not the formulation which will appear in the constitution. It will simply - we brought this to determine as a principle. This report was prepared by the Technical Committee and once you have approved the principle, it will be worded properly to fall in line with Article 55 or 54 where these rights appear.

**MR. OKWAKOL:** Thank you, Hon. Kanyeihamba for that clarification. Now I wish Madam Chairperson, with your permission to make a few observations and the first one is that this is a good idea. These rights need to be inalienable and must be entrenched. I wish to make some few observations Madam Chairperson, that we have had some dark spots, some dark eras in the history of our country. I wish to allude to the fact that it is common knowledge in this country that places like Basiima House are meant for certain things. When you mention Basiima House, people know what takes place there. They know that it is connected to torture and it is connected to human degrading. Also Madam Chairperson, time was when a house at Nakasero was a State Research Bureau centre where lots of people were murdered and tortured. This I say is - (*Interjection*) - Yes! And indeed, let us own up and indeed people say Nile Mansion. There is nothing to be ashamed of. Let us face our history. If there was torture in Nile Mansion, let it be accepted. However, what I am saying Madam Chairperson, is this that if Nakasero was a torture chamber, then one would have expected that governments which come subsequent to those which have tortured previously -

**MRS. WINNIE BYANYIMA:** Point of clarification! Thank you Madam Chairperson and thank you Hon. Okwakol for giving way. I need clarification because I think we ought to say things when we have facts at our finger tips to explain what we are saying. I agree with you when you say Nile Mansions was a torture place because some people from my constituency - and I can name five - were last seen here during the UPC government and disappeared and have never been accounted for. I can name five: Mr. Mbiringi, Mr. Kabazaire, Mr. Rutehenda, Mr. Rwancwende and his other son Rwancwende all disappeared here, they were tortured here, people saw them being tortured, they disappeared. We have never buried them. Now if Basiima House too is a place of torture and killings, I would like him to name for us some people who have been tortured and killed there. Thank you.

**MR. OKWAKOL:** Madam Chairperson, that clarification by Hon. Byanyima is welcome. As I said earlier, this is the time for us to clear the debts. This is the time for us to speak out and see whether torturing has taken place in the past. This is time for us to know where that torture took place and I conceded sometime earlier on that, indeed tortur-

ing could have taken place in Nile Mansion. By the same argument, I was saying that today places like Basiima House are renown for that kind of torturing which Hon. Byanyima alludes to have taken place in Nile Mansion. I am also adding on to say that the former State Research Bureau centre at Nakasero no doubt claimed many victims of our nationals. There is nothing we should be proud of about this. What is disturbing Madam Chairperson however is that, instead of learning from our history, and that learning from our history Madam Chairperson has entailed subsequent governments putting aside that place, say the State Research Bureau headquarters at Nakasero into a kind of museum, a museum which should be created to show signs where our people died and that museum should be a teaching place, schools should have been in a position to go and take their children there to visit this chamber of torture so that those children who visit there learn that never again should we go through that kind of dark history. Instead of creating that kind of education institution, what do we have? First, Nakasero was turned into some kind of offices, elegant offices for the rehabilitation Ministry. Maybe that was a cover-up because soon after, we learnt that Nakasero chambers has reverted to its old function. If that be the case, then it means Uganda has not learnt. We have not learnt from our history and I beg Hon. delegates in this House to do whatever they can, to influence future governments to ensure that places are created for teaching people not to kill, not to torture their fellow human beings. I thank you, Madam Chairperson.

**MR. RINGWEGI:** Thank you, Madam Chairperson. Madam Chairperson, I have gone through the Committee's report but I have a problem with 4(c) which enumerates "*torture, cruel, inhuman or degrading treatment or punishment.*" My problem Madam Chairperson is that I see inconsistency if this provision were to be passed the way it is presented by the Committee. The inconsistency here Madam Chairperson, according to me is this; under Article 52 of the Draft, we have already passed provisions saying that no person shall be deprived of life intentionally except in execution of a sentence of court of law in a fair trial in respect of a criminal offence under the law of Uganda of which he has been convicted. In other words, Madam Chairperson, we have legalised the death penalty and we have agreed that the death penalty being administered as a form of punishment is one such derogation from the fundamental human rights

which is the right to life. Now, my question is, is death penalty actually not a very inhuman punishment? What can be most inhuman than that which takes away the humanity? If we agree that death penalty is inhuman, then why should we say in this subsequent clause that no right will be derogated in form of a punishment which is inhuman? Are we not being inconsistent?

Secondly, what can be most cruel other than that? If we are saying that that is a very cruel form of punishment and we are saying nobody should derogate from that, are we not being inconsistent with the provision we have made in 52? So Madam Chairperson, these are the problems I am facing and I would like the Hon. Chairman of the Legal and Drafting Committee to agree with that that the word "punishment" should be removed from (c) in order for his recommendation to stand without any inconsistency, so that we have only "*torture, cruel and inhuman or degrading treatment*" but not punishment, because if we included punishment, we would in effect be saying that death penalty is abolished. I thank you, Madam Chairperson.

**DR. MUGYENYI:** Thank you, Madam Chairperson. Madam Chairperson, I want to also seek clarification from the Chairman whether medical treatment of any prisoner under any circumstance should not be guaranteed even under the state of emergency. Because I am looking at it not from the accessibility point of view but from the right of a person's point of view. I am imagining that this person should have the right to have medical treatment but I am not saying that he should be accessible to medical treatment because there are circumstances when it may not be possible. But I am looking at a situation where under difficult circumstances a person may have a possibility of accessing himself to medical treatment and this right is not guaranteed when we are enumerating the rights that must be there even under very difficult circumstances. Does the Chairman tell us that medical treatment should be derogated under certain circumstances? So I wanted to ask the Chairman, if he agrees, that we include medical treatment among the rights that should not be removed from a person even under very difficult circumstances. I thank you.

**MR. GASTON MALIRO:** Thank you, Madam Chairperson. Mine is a clarification from the Chairman of the Legal and Drafting Committee

and it is on technical grounds. Madam Chairperson, I want to be clarified as to whether when we, in Article 53, removed the other exception that the order of habeas corpus shall not be suspended, whether in that case, we are not trying to guarantee the right of hearing. Also I want to know when in Article 71, when we passed that any person - that is under detention, under emergency laws - that people are detained under such laws and shall also be produced before the courts of law and within 48 hours. That is what we passed. I am wondering whether that one also did not cater for the right to hearing. Then also when I look at Article 72, which we have already passed, it talks of "*the exercise of a state of emergency shall not affect the enjoyment of the right to human dignity, life or fair trial as guaranteed by this constitution.*" Now, when I look at the three provisions they have put, they have omitted life. When I look in 72, it is saying that even when there is a state of emergency, life must not be tampered with. So I am wondering whether these two are compatible or not. When you talk of the right to hearing which is contained in Article 50, we have already passed it and Article 72 says that the right to fair hearing must not be interfered with even when there is a state of emergency. So, the clarification I am seeking is, are these two provisions - is this new provision to be in addition to this Article 72 which we have passed or is it in substitute of this one? And if not, what is the difference between the rights which are guaranteed under Article 72 and this prohibition of derogation, which we are providing for in these new provisions. Thank you, Madam Chairperson.

**MR. WASSWA LULE (Rubaga Division North):** Thank you, Madam Chairman. I am a bit concerned. What the Legal and Drafting Committee seeks to do is to render certain rights inalienable but the Vice Chairman of the Legal and Drafting Committee confirmed my concerns about the essence of the Bill of Rights when he said detention without trial which is allowed for in Chapter 5, the Bill of the rights of the Constitution, the dichotomy of which I am particularly ashamed that it is the case, is first of all, it is specifically stipulated in the crow back Clause that under no circumstances will we have detention without trial as a derogation. Then, there is a very wide back door that is opened in the last sentence of the derogation clause which refers to whatever is provided in the Constitution. I do not know what takes precedence, but I have expressed myself so clearly, and so specifically in

the crow back Clause because this is just one out of the two items - the derogation Clause - that are specifically enumerated: political persecution and detention without trial. Then we proceed to effect that contradiction. My say is this that, it is all very nice to have the amendment as brought as the fair hearing and slavery, and you know the torture of being inalienable but as demonstrated, it cannot be effected unless an amendment is made to that crow back clause to make sure that it cannot be derogated in any way. I think that is the only way you can actually go ahead.

So, it looks like an exercise that needs to be referred back to the Committee so that they look at it in conjunction with the derogation clause and come back with a position that actually guarantees these rights. It is most unfortunate, it is not only detention without trial, association and assembly are also under assault. The right of self determination; all these which would have been guaranteed by this Constitution are not and we cannot refer to the Bill of Rights and which actually in itself renders the Bill of Rights just a piece of paper that becomes meaningless if it cannot be effected. Now, when I go down to the 3rd Clause, I hope my recommendation can be taken so that the issue is referred back to the Committee so that we can sort this issue out once and for all. We do not really need to wait for Reconsideration because it affects other areas in the Constitution where the rights once given are taken away. It will render this Bill of Rights only good for showing to the International community that we have a Bill of Rights and they have to go elsewhere to see that in actual fact, it is air supply.

Now, going back to this cruel, inhuman treatment, this torture, cruel and inhuman treatment is normally meted out within the first 24 hours of arrest and Hon. Abu Mayanja made a good contribution and he even went as far thinking aloud a revolutionary say of ensuring that this sort of thing does not take place. I was rather surprised by my Hon. Friend Winnie Byanyima, challenging Hon. Nathan Okwakol about torture in Basiima House. Now, politicking is one thing but these realities are there. So it is not good to say I can name five people, I could sit here and name five people which have been tortured by this regime, but it is not the issue, what we want is to clad a Constitution. I know many names of - that is not the importing thing, saying that I can name five people, I could name very many people - people have been tortured, and even today

as the Hon. Abu Mayanja referred to the journalist who was held in CPS for up to a week in total disrespect for the rule of law before being taken to a court of law, he heard people being tortured up there in CPS, that is today. Now in total disrespect of the rule of law, today, you find that people - *(Interruption)-*

**LT. NOBLE MAYOMBO:** Point of clarification! I beg to clarify on behalf of Hon. Byanyima to Hon. Wasswa Lule and the House that with your permission, Madam Chairman, the whole principle of Parliamentary immunity is to enable delegates or members of Parliament articulate the views of their Constituency while insulated from legal proceedings. For there is an underlying presumption that to be able to arrive at a meaningful discussion and an enriched discussion, members will respect that immunity and do research and make substantiated statements from which we can now make a Constitution, or from which we can make a proper revisitation of our history. I think this was a spirit of Hon. Byanyima's clarification and I will therefore go ahead to say that it is meaningless, it is diversionary, it is empty, it is in fact defamatory for delegates to stand without any statement to associate his claim to say, we torture people in Basiima House. It is in fact useless. It would best serve the interests of this Assembly, at this stage of consideration because we have left the general contribution, we are now about to enter re-consideration. It is empty, it is useless to make these empty statements. Thank you very much, Madam Chairman and Hon. Delegates.

**MR. WASSWA LULE:** I do not know how really that has helped, but anyway, I will proceed to enumerate some cases of - current cases, where this disrespect for the rule of law - we shall leave torture aside as I said I have many cases - but this respect for the rule of law, so if we do not put the liability on these individuals who have immediate responsibility, that is where these abuses of the law come in. Now, take the more recent cases as I said, a Journalist was held for 7 days, Lawrence Kiwanuka of the Citizen Newspaper - *(Interjection)*

**THE DEPUTY CHAIRMAN:** Hon. Lule, are you taking the information.

**MS. ADIO (Women Representative Soroti):** Thank you, Madam Chairman. The information I wanted to give was in connection with the issue of

Hon. Byanyima my colleague - my name sake Hon. Byanyima because apparently, it is a follow-up and I am trying to give the information to the House. Hon. Mayombo said it is empty. In my view, it is not empty, the Basiima does not only have to be in Basiima; we have had torture houses all over the place. In brief, in this House we have people who were a model of torture, it does not necessarily have to be Basiima House. Thank you.

**MR. WASSWA LULE:** I thought the point was so clear, it did not even need enumeration, but thank you very much. As I said, this disrespect for the rule of law which could result in torture, more recent cases which were awaiting to come to court, where people have been arrested, include the case of one Joseph Luse, he was arrested some time back, I have never heard that he has been taken to court unless I am mistaken. There are other people who have recently been apprehend, many of whom have not arrived in a court of law within the stipulated period or within 24 hours thereafter as we passed in the Constitution. Only last night, we heard the arrest of Lt. Col. Kawuma, I do not know even his case, he will be taken to a court of law within the stipulated period. The reason why these people are supposed to be taken is: one, you have accountability; two, you establish the state of the condition of the individual; three, you effect separation of power in that the apprehending authority passes on to another authority who is the detaining authority. That they do if the apprehending authority has a personal interest in the case, that one is severed from the individual. That is why we should have these safe guards.

Another as I said, I propose that because Chapter 5 as it was written is totally incapable of guaranteeing these rights as inalienable, I believe that the exercise we are trying to carry through becomes useless because of the manner in which the crow back clause was written. Now, I had wanted to move an Amendment vis-a-vis what Hon. Mayanja had said to pass on personal liability to individuals who are immediately responsible for not effecting the time limit - the time parameter that has been stipulated in the Constitution or for effecting torture. Now I do not know if my proposal to refer the issue back to the Committee is accepted, I would rather move the amendment, then if it is not, then I would like to proceed, to move the "" - Amendment in that respect, Madam Chairman. Perhaps if I can throw the Floor to the Chairman of the Legal and Drafting

Committee, and if he could respond to me in that respect or a ruling from you, then I can proceed in whichever direction is appropriate. Thank you very much, Madam Chairman.

**THE DEPUTY CHAIRMAN:** Hon. Wasswa Lule. Earlier on, you had proposed that we go back and integrate these issues, that we do not have to wait for reconsideration, but I am saying, if that is to be done according to your first request, we have to wait for the reconsideration stage because we cannot re-do, what we did during consideration stage. Well actually, we are in consideration stage. But then I call upon the Chairman, then from that one, we shall see where we go.

**MR. LULE:** But perhaps you can clarify this because you see (*Interruption*).

**THE DEPUTY CHAIRMAN:** You see, what you are saying is that we are referring the matter, then it is useless to bring an amendment we are not discussing it.

**MR. WASSWA LULE:** What I am saying is that, what I was advising - it is so fundamental to the whole Constitution making process - that is the crow back clause, it makes discussing the rest of the Constitution - (*Interruption*)

**THE DEPUTY CHAIRMAN:** Okay, in that case - (*Interruption*)

**MR. WASSWA LULE:** There is an avenue in that we can revisit issues, but because this issue is so fundamental, I believe that it is something that should be referred back and revisited.

**THE DEPUTY CHAIRMAN:** Then if that is the case, when we go for reconsideration, you can move that we start there.

**PROF. KANYEIHAMBA:** Thank you, Madam Chairman. I think that I am very, very glad about your last ruling and I'd like to - really I feel a bit concerned that my Hon. Friend Wasswa Lule, he has brought these Amendments before in reconsideration. I think is not fair to say, simply because your idea is good, persuasive as it may have been, that was defeated or not taken up, then the whole exercise which everybody else has accepted is useless. I think that at reconsideration, we may perhaps be persuaded to accept that. Nevertheless,

Madam Chairman, I want to remind Hon. Delegates that indeed we are very surprised that the debate took this turn. What we are dealing with is situations where this August House in its own wisdom, at consideration, has passed this Chapter Article by Article, it has enumerated what are the basic rights and fundamental freedoms of the citizens or the people in Uganda. It has gone in greater detail. Having done that, it also passed a general derogation clause, saying that under the following circumstances, in emergency, during a situation of war, we may derogate from these rights. That was also accepted by this August House. Some people may have argued against it but at the end, when the question was put, it was passed. That is why it is compiled here.

What the Legal and Drafting Committee is saying is that having revisited what you have passed, we are proposing that these enumerated rights, they should be absolute; they should be lifted from the general body and be made more inalienable, that is all that we are doing. So, you either agree with that or you simply say, let them be part and parcel of this general body of Chapter five, but to reopen the issues of detention and so forth which you debated here at length, and came to the set provisions, we never intended that this exercise should be the opening of the Pandora's box or to settle the old argument that were defeated earlier on. Nevertheless, if there is anything to that effect, I suggest that it is reserved for reconsideration and not for our recommendation. I think a person, again and again has said that the issue is about detention without trial but sometimes we argue without really looking at what we have provided. We have provided an elaborate machinery of review and inspection, where persons have been detained. It was argued here from all sides that there are situations which justify detention. One obvious example is a lunatic. If a person is a lunatic, he is running about with an axe killing everybody, we all agree that they should be detained. So, that alone is a derogation from detention. Therefore, no body can argue that you cannot derogate from detention. During the insurgency, whether you rightly agree with how Government handled it or not, we had thousands and thousands of insurgents who had to be put in jail, when somebody argues that each individual should be tried as to whether he participated or not, when actually the war is still raging on, it is impracticable.

So, there will be occasions in emergency or during the time of war, when it is inevitable that people will

be detained without trial for some period, that is a fact of state machinery and please let us not run away from it. Some of the individuals who have argued here quite rightly, have suffered very miserably under illegal detention. Nevertheless, you will recall that we have been very, very careful in defining what we mean by detention and we have said, for example, that public interest does not include political considerations, that you are going to detain a person, because he opposes your policy or something like that, that now it is in the Constitution going by the views that have been presented.

Somebody talked at length about conditions of arrest and conditions of detention. Again, we have been very, very, careful in providing specific provisions for dealing with suspects, how they should be arrested, how long they should stay in jail, that is already in the Constitution. Hon. Kweronda Ruhemba has at length talked about the misery suffered by his constituents, but if you look at Article 55, again we have completely defined what we mean by forced labour, slavery, and so on and so forth. The other argument that has been brought forcefully forward was by the Hon. Members who are saying that we must be provided, make a provision in the Constitution to ensure that those who violate the rights of others are dealt with personally. In other words, they have joint and individual responsibility. But that, we have done very, very elaborately. If you look at Clauses - I had put them down here, the Clauses dealing with the establishment of the Uganda Human Rights Commission, we have given it powers not to investigate such atrocities as denial of human rights but to award damages and to recommend dismissal of persons who have been involved in these torture. Secondly, we have gone further. We said that any individual whose rights have been abused or violated can go to court in addition and seek a remedy and shall have representation by lawyers and so on and so forth. So, sometimes I feel that we make arguments not having looked at what we have already passed and I hope that members - they should really go back and see what we have already passed.

I want to specifically deal with three issues. One is about whether we should delete "punishment." I have sympathy for Hon. Ringwegi's argument because the purpose of the punishment is, to any extent, to degrade the accused person. make him ashamed of his offence and therefore, it may be necessary in some of these offenses that a person

should get a degrading punishment. So, for me, I am convinced by the argument of Hon. Ringwegi, that we should delete the word "punishment" from this recommendation because part of punishment is to degrade someone who has been a sore spot in society. Then Dr. Mugenyi's point, he said doctors treatment should be also guaranteed but you see, we discussed this point, we are talking about universal rights, rights which apply to every Ugandan, whether he is free, whether he is in prison, whether he is detention or under any circumstances whatsoever, that is why we are calling them absolute. Now, we already debated and rejected an amendment which wanted to create a right to universal medicine and treatment because we thought we could not afford it and in any case, it was not on opportune moment. So, obviously, in relation with people who are detained, we have made specific provisions for them to have access to doctors and to medical treatment. That is specifically in the Constitution, but that is a long way from saying that that right should be inalienable, because that is then covering everybody in Uganda. Once you say that it is inalienable, then you are saying that every Ugandan, wherever they are, they should have free and adequate access to medical treatment which we have already rejected.

The last point, Madam Chairman, I feel that needs clarification is that, I think my Hon. Colleague there was asking that we have already guaranteed some of these rights, we have guaranteed habeas corpus, that even in emergency, the right of habeas corpus shall be there, but I think it is a misunderstanding of what habeas corpus is about. Habeas corpus literally means produce the body and what the law says is that the detaining authority should bring that person to court and then explain to court why they are being detained and the emergency. If the detaining authority convinces the court that they are valid and constitutional reasons for doing so, then the person is taken back and detained. So, it is not a requirement for fair hearing, it is simply a requirement to say, you must justify why you are detaining this person and in many cases, when *habeas corpus* have come to court, the courts have been satisfied with the explanation given by the Ministry of Internal Affairs or whoever that the detention was lawful and constitutional. So, it has nothing to do with fair hearing nor when you say that the right to life is now guaranteed, that is not correct. Because if you look at Clause 52 which we have already passed, it says that the right to life is

guaranteed, no person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of criminal offence. In other words, we have already allowed derogation from that by the very wording of Article 52 and therefore, it cannot be a subject of absolute immunity.

Secondly, you know that during the time of war, people can be killed under the emergency declaration. Many people after they have read the *Riot Act*, the Police can use force, including killing those who may be involved. That is all expected there. Further, Madam Chairman, the *Police Act* which now is on our Statute Books, in which I had the honour to participate in recommending improvement, it has made it absolutely clear that a person who denies another's right or who mistreats another shall be personally liable apart from the State being liable for employing such a bad person. So, this is much more secured and more detailed in there, but what we have Madam Chairman, and what this Constitution cannot cure, is the culture of our people, the culture of our Police who have not been trained properly. Only the other day, after we had even passed this Constitution and we know that it was in the previous one, that no person shall be subjected to inhuman and degrading treatment, I happened to be passing by the Golf Club and a Police Officer who had been assigned to go and search for I think vagrants and arrest them, they found one man sleeping there without a shirt, he was sleeping, presumably he was under the influence of drink, they escorted him, and then they started beating him and in the presence of Golfers and they beat him very thoroughly. So, I walked along and I said, why are you beating this man? He has submitted to you, he is peaceful, he is not fighting with you he is not armed? And the Police Officer in charge who I believe was not very well trained, simply challenged me saying who are you to tell us how to do our duty? I tried to remind him of the Constitution, but he said, that Constitution we do not have, we do not even have written regulations of the Police let alone the copy of the Constitution. And when I continued to challenge him, he threatened to beat me up as well.

Now, this is not a matter of the Constitution, it is a matter of a culture that has engulfed our society that when you are in authority, you have the right to beat up anybody, that you have the right to torture anybody and regardless of what the Constitution is

saying. That is why we have provided in the Constitution that the Constitution must be taught to our people starting with the Police and the Minister for Internal Affairs must take it up urgently to really inform the Police, that they have no right to violate the Constitution or to violate the rights of our citizens. Madam Chairman, I think it is very, very, import to note that the rights and freedoms we have selected as being the subject of absolute immunity are those which are universal so that when you consider them at any given time, you can say there is no need for you to do this even when there is a war situation. And the ones we have not listed, if there is anybody in their wisdom who thinks those can be subjected to this universal test which I call the Constitution litmus test, then we can include them here. But in our wisdom, those who attend this Committee and the lawyers believe these are the only ones that you can identify as which should be inalienable as I said, the wording will be more tightened. It is only that if you pass this principle, then these rights will become inalienable. I thank you, Madam Chairman.

**THE DEPUTY CHAIRMAN:** Hon. delegates, really I think that explains what we have debated. Let me try to summarise and see where we end because we are nearing lunch time and I feel that we could finish this one.

**MRS. SEBAGEREKA:** Clarification, Madam Chairman.

**THE DEPUTY CHAIRMAN:** Are you clarifying?

**MRS. SEBAGEREKA:** No, I wanted the Chairman - *(Interruption)*

**THE DEPUTY CHAIRMAN:** But I opened a Pandora's box!

**MRS. SEBAGEREKA:** No, it is what he left out.

**THE DEPUTY CHAIRMAN:** Because there are so many hands, I would not like to see that I am favouring so and so at the cost of another person. Okay, let me summarise. That is exactly what I am saying, we pronounce ourselves on this one because after (1) and (2), I will have opened the debate again, then somebody else will put out his hand for clarification. Now, let me summarise that from my observation, most contributions were requesting

for clarification or they were clarifying, but they were not in opposition, that is my first observation. The second observation is that, what we need to do is to agree whether these provisions are worth considering. Thirdly, we also were told that the formulation placement could be considered by the Technical Committee after we have agreed on the principle and fourthly, that the synchronisation of provisions of articles we have already passed during consideration stage now can be done during the reconsideration stage. So, we can accept the principle, then placement and synchronisation - the concern of Lule and all the rest, could come when we come to the reconsideration but knowing that these provisions are now part of the Consideration Stage. Now I put the question.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** So, I think that completes Hon. Kanyeihamba's report. Now in the afternoon, we have our order paper and I am referring to you, Hon. Kanyeihamba how the Order Paper would be considering Chapter 7 on the Executive by Committee Two on the pending information. But Hon. Kanyeihamba had something on the Public Service, Chapter Twelve but I am saying, members, because it was not on the Order, the Committee may not have been ready for it. So, even if you have been talking, you can have relaxation, so that you also contribute. We go to what is on the Order Paper, then perhaps tomorrow, we can fuse it in that you come in or we can even go in chronological order, 5 then we go to 7, and then when we come to 12 they will plug it in on the Order Paper. Thank you very much. So, we adjourn until 2.30 p.m. in the afternoon.

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

**THE DEPUTY CHAIRMAN:** I had completed Hon. Kanyeihamba's report and we happen to have issues on Chapter Seven, The Executive on the agenda. I do not know whether the Chairman of - Hon. Mulenga, what do you have to say?

**MR. MULENGA:** Thank you, Madam Chairman. Madam Chairman, the report of Committee Two on the outstanding matters referred to it is still under typing, it is not ready, but I wish to point out that some of the matters listed as referred to the Committee were not really referred to the Committee but were deferred by the Plenary to consider later. I

refer to what is shown on Order Paper as 2 (b) - or is it 3 (2) - paragraph (b), at the bottom. Article 116, Cabinet Ministers, Clause (2) whether or not Ministers should continue to be members of Parliament and then (ii), Clause 3, a Member of Parliament vacating a seat when appointed as Minister.

Earlier in the day I had drawn attention of the clerk to this so that he looks up the minutes to confirm my memory but these were not matters referred to Select Committee Two, but matters deferred for consideration again by Plenary. The same applies to Article 131. This is composition of Parliament. This, I believe is in respect of women MPs, the manner in which they will be voted. So, that was not referred to Committee Two. I believe Madam Chairman, with regard to the other matters, the report should be ready for circulation to tomorrow morning. We can debate on whether Ministers should resign when -

**THE DEPUTY CHAIRMAN:** I think we can debate 2 (b) on whether or not Ministers should continue to be members of Parliament. I think members have done enough consultation to enable us make a decision.

**MR. AGGREYAWORI: (Samia Bugwe North):** Madam Chairman, this question of separation of powers, particularly the Executive, Legislature and Judiciary has been controversial but has also been stretched too far. When we said there shall be separation of powers, we do not in the same breath mean that the two or three are not complementary as a system of governance. Madam Chairman, my position and the views of my constituency electorate is that a person who ascends from the position of - *(Interruption)*

**MR. BEN WACHA (Oyam North):** Point of Procedure! Thank you, Madam Chairman. Madam, I would want the Chair on a matter of procedure to assist me. My recollection is that this matter was debated and then put to the vote and as a matter of fact, those who say that Ministers should not be members of Parliament won, but they did not win enough for it to be placed as a provision of the Constitution. Now, I am asking you Madam, in a situation of that nature, do we come back and re-open debate or we go ahead and vote?

**MR. MULENGA:** Madam Chairman, my recollection is this, when the recommendation of the

Committee was on the Floor. An amendment was moved, I think, to delete and it is that, that we debated, although of course, arguments for and against were expressed. The Amendment was, I believe defeated in a division and the Chairman expressed the view that if we moved on to make us vote on the recommendation of the Committee, chances were that the voting would follow the same pattern and we may be starting the journey to a referendum. So, he decided that we adjourn debate on that matter, go and consult and hopefully, when we revisit the matter, Hon. Delegates or some of them will have changed positions to make the voting more decisive. So really, it is not debating a matter that has been debated on unlike the one question of voting method for women delegates - district delegates which was voted on once. This one, the recommendation was voted on - the recommendation of the committee. That is my recollection, but I had asked the Clerk, I do not know whether he failed to trace the minutes, it would be more reliable to go by the minutes on the plenary.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, let us give ourselves just one minute, they have gone to bring some documents so that I am put in the picture as I did not Chair this Session. Let me just get some clarification. But as Hon. Mulenga said, for the sake of good work, and as long as we are not breaking the Rules, I think it does us some good because when you go to wait and come back to vote, I think you have got to consult and when you go to consult, you will have changed your mind, and the reasons for changing your mind would be useful to fellow delegates if they could also be persuaded. So, Hon. Wacha, I really do not know whether it does us any harm as long as we are not breaking the Rules to allow 2(3) or 3(4) to remind ourselves, perhaps we may reach a consensus rather than landing ourselves into problems. I leave it to the House to -

**PROF. KANYEIHAMBA:** Madam Chairman, as you can see, recollections are a bit dim and obviously, as you rightly observe one or two speeches might help us. But for me, I was wondering because many members are not here and I understand some of the people who might have guided us on whether they have changed their minds or not maybe meeting elsewhere in Cabinet and obviously this touches on them and it was my suggestion that we have another report which is ready and where peoples memories are still fresh and that is, this other second

report of the Legal and Drafting Committee dealing with Health Service and one or two items which are very minor. I wonder whether we could not debate those instead, while memories are recovered and maybe, the Chairman will have got this report typed by tomorrow. I was suggesting that.

**THE DEPUTY CHAIRMAN:** On my desk, I also have Hon. Kaberuka's report. Hon. Kaberuka, will you be ready when he finishes - in case he finishes? Okay, you have a enough business, that is a very good suggestion, I would rather than wait, start combing papers. I thank very much Hon. Kanyeihamba, so we go to your report and then after that, we shall go to Hon. Kaberuka's report and see how much we can clear. Thank you. I think the House is agreeable.

**PROF. KANYEIHAMBA:** Thank you, Madam Chairman. I trust that the - (*Interruption*)

**THE CHAIRMAN:** Is that on Chapter 12? I am saying, we are considering the report on Chapter 12.

**PROF. KANYEIHAMBA:** Yes, Madam Chairman.

**THE DEPUTY CHAIRMAN:** I just wanted us to be together.

**PROF. KANYEIHAMBA:** So there is a report which is on Chapter 12, that is Public Service, which was actually referred to the Committee by the Assembly and the report of the Legal and Drafting committee is ready on that one. On page 2, there are one or two other minor items also referred to the Committee. One was about the deletion of the word reasonable from Article 199 (1) about pensions and also there is recommendation of placing this particular Article in the General and Miscellaneous provisions since it touches on people who are employed in Public Service generally and not necessarily those who are in the Public Service or covered by the Public Service Commission.

So, Madam Chairman, I would like to report as follows that Hon. delegates will recall that when the Assembly debated Chapter 12 on the Public Service, it referred the following matters to the Legal and Drafting Committee for consideration and report:

(i) Health Service; After the Assembly had approved the clause of the then Article 195, which established the Health Service Commission, the Assembly charged the Legal and Drafting Committee with a duty of proposing the composition and functions of the Health Service Commission. In Article 199 (1) on Pensions, the Assembly requested the Legal and Drafting Committee to consider an amendment brought by certain honourable delegates to delete the word "reasonable" from that Clause. The Legal and Drafting Committee met to consider these two matters and came up with the recommendations which I am going to read.

On Health Service Commission, the Legal and Drafting Committee, after serious consideration and in particular, after examining the provisions relating to other service commissions namely; the Public Service Commission, the Education Service Commission and indeed one which is missing in our report, the Judicial Service Commission, came to the conclusion that it was preferable for the details of the composition and functions of the Health Service Commission to be spelt out in the Constitution as had been done in the cases of the other three Services, rather than as the Committee had reported, simply establishing the Commission and leaving Parliament to prescribe the composition, functions and operations of the Commission which would have been dissimilar to what had already been prescribed for all the other Commissions. So, we felt Madam Chairman, that it would be much better to have a similar format for the Health Commission as well as for the others that had been established and in that regard, with the assistance of the Technical Committee, we came up with the formulation which is in the appendix to this report which comes after page 2, and members might want to look at that, and that is what we are seeking for this Assembly to adopt as the specific provisions relating to the Health Service and Health Service Commission.

The other two points, Madam Chairman, were very minor, there had been an amendment in Article 199 about pensions which is now new Article 221, for deletion of "reasonable." Now, with regard to the proposal for dropping this word, our view is that this proposal should be accepted by the Assembly and this is because we feel that no harm will be caused by deleting the word "reasonable" as had been done in a similar case in Article 109, of the Draft Constitution in relation to the conditions of

office of the President particularly relating to his or her remuneration. And the last one is about the shifting of Article 199 - the same Article - from where it is at the moment to the Chapter on General and Miscellaneous provisions, that is Chapter 18. In order to put beyond doubt that this Article which guarantees payment of pensions free from tax applies to other public officers such as Prison officers and so on and not necessarily those referred to under this Chapter under which they appeared. Madam Chairman, I beg to report.

**THE DEPUTY CHAIRMAN:** Thank you very much Hon. Kanyeihamba. So, I propose we start with the easiest, then we go on to the Health Service provision. So, I want to put the question on the proposal that we delete the word "reasonable" from Article 199 (1) or as may have been re-numbered.

*(Question put and agreed to).*

**THE DEPUTY CHAIRMAN:** The word "reasonable" is deleted from that Article as it may be renumbered. Then, on shifting Article 199, to the Chapter on Miscellaneous, I want to put the question that we shift Article 199 to the Chapter on Miscellaneous and the numbering will be determined by the Technical Committee.

*(Question put agreed to)*

**THE DEPUTY CHAIRMAN:** 189 is also shifted to the section on Miscellaneous and the numbering will be done by the Technical Committee. Now we go to Article 196 and 197 on the Health Service. I do not know who is leading us, whether it is Hon. Kanyeihamba or the Chairman of the Committee. Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** Madam Chairman, as I had said earlier, the original proposal by the Committee which dealt with Chapter 12, was that we simply establish Health Service Commission, and then the details about its functions, the membership of its Commission and their terms will be determined by Parliament, but I have already emphasised, we had already established a format for all the Service Commissions such as Public Service Commission, the Education Service Commission and the Judicial Service Commission and it was the view of the Assembly, and the Legal and Drafting Committee agreed that we should have a similar format for this Health Service Commission and therefore, we are requesting Article 196 to be re-

drafted and detailed as provided on the first page of the Appendix and we say in that Clause (1) that: "there shall be a Health Service Commission for Uganda." I do not know whether you want to go clause by clause. Then the most substantive new recommendation is Clause (2) Madam Chairman, where we say that: "the Health Service Commission shall consist of a Chairperson and not less than six other members appointed by the President with the approval of Parliament."

**MR. CHEBET MAIKUT:** I think the other time when we were discussing one of the commissions, a question was raised as to whether there need to put the upper limit of the membership of some of these Commissions, and in that respect, Madam Chairman, I am seeking clarification from the Chairman of the Legal and Drafting Committee as to whether it is not possible also to put the upper side of the membership of the Health Service Commission. Thank you.

**PROF. KANYEIHAMBA:** Madam Chairman, it is always possible to put an upper limit in a clause of this kind. Our own views which we express and the consultations we had was that this should be a manageable size of Health Service Commission and that it would be a manageable one if really the number was not too excessive and people thought that it should be really a maximum of not more than six members excluding the Chairman.

**MR. NGOBI (Presidential Nominee):** Thank you, Madam Chairman. I recall very well that we did debate the question as to whether we should have a maximum number. But I think we looked at all the Commissions and even suggested formulation by the Odoki Report which suggested a minimum number and a point was made that the way this has been done, it has never been a problem that too many people were appointed on a Commission. We therefore decided if my recollection is right, to leave the formulation of stipulating a minimum number and leave the maximum number open because it is not necessary, it has never been abused and there will be no problem in practice. That is where I think we concluded and the same formula should apply for the Service Commission.

**MR. AWORI (Samia Bugwe North):** Madam Chairman, while I am aware of specific steps for affirmative action in other areas for the sake of clarity, do we not have any provision here for the gender party?

**THE DEPUTY CHAIRMAN:** We assume you have read your report. If it is not there, then make a substantive - any way, Hon. Mugenyi, I think this was your baby, why do you not bail out Hon. Kanyeihamba? The problem is where do you consider affirmative action? That is Hon. Aggrey Awori's question.

**DR. MUGYENYI (Isingiro North):** Madam Chairman, I think there was a general provision which was taking into consideration affirmative action and considering appointing women on all Constitutional bodies and I do not know what will be the implication if it specifically talks about only one commission, that would mean stating a chain and making amendments on all other Commissions. So, the fact is that we have catered for affirmative action and we have actually made provision to make appointments, taking into consideration affirmative action on all constitutional bodies and I think this is one of them. I do not see why we have to mention it specifically here, unless we are ready to go backwards and mention it on all other Commissions, in which case it would necessitate removing the general clause which we had provided for. I do not know what Professor thinks, but in my view, I think since there is a general provision for general affirmative action, I do not see why we have to repeat ourselves. Thank you.

**MR. OKALEBO (Bukedea County):** Thank you, Madam Chairman. I really see that the point raised by Hon. Aggrey Awori is uncalled for, because here the provision says, "*not less than six other members appointed by the President with approval of Parliament.*" If I may ask him, what type of members are these? Does this provision point in one direction? It does not. It covers whatever he is thinking of. So, the appointment of whoever will be appointed will be done by the President and Parliament has to approve. You do not have to say here there will be three men, there will be four men or four women, I do not think that really comes!

**MR. NASASIRA (Kazo County):** Point of procedure! Thank you, Madam Chairman. I rise on a point of procedure, Madam Chairman. Hon. Aggrey Awori asked for a clarification and in your good wisdom, Madam Chairman, you suggested to him that he has read the report and if he wanted to move a substantive Motion he should do it. From my understanding, Hon. Aggrey Awori realised - he shied on moving the Motion and I am seeking

whether procedurally we should continue debating his proposal when it is not formally moved, Madam Chairman.

**THE DEPUTY CHAIRMAN:** Hon. Nasasira, I was just advising but I had to ask for his consent that is why I advised but then, I gave the Floor to another member to convince him because I do not have to join the debate. But I think he has got it and Hon. Okalebo has put it right. So, are you not satisfied? I think you are covered.

**MR. AWORI:** Madam Chairman, I am covered but not satisfied, the only reason why I was raising the matter is that this is where there is a lot of discrimination against certain gender and I am saying we better be clear, I was just seeking clarification to get clarity.

**THE DEPUTY CHAIRMAN:** And you have been clarified by Hon. Mugenyi, the Mover and Hon. Okalebo. So, I think really you should leave it at that. Let us go through quickly and then know what we are confirming. So, I think (1) is agreed, (2) is agreed.

**PROF. KANYEIHAMBA:** Thank you, Madam Chairman. Clause (3) It is proposed that "*the president shall appoint not more than two members of the Commission as Deputy Chairpersons of the Commission.*" I beg to move, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Kabayo.

**DR. KABAYO (Kassanda South):** Thank you very much, Madame Chairperson. Since it appears there is *confusion* behind the formulation being recommended by the committee in respect to the Health Service Commission, was there need to bring in line this Commission or the other Commission that had been passed? Could the Chairman of the committee explain the wisdom behind the recommendation for two deputies when the other commission was one deputy? Thank you.

**PROF. KANYEIHAMBA:** Madame Chairperson, I think that the proposers of this amendment were aware of the peculiar nature of the Health Service. Its complex nature and the fact that it has got so many disciplines. Some of them do not relate and of course, taking into account also the point which Hon. Awori raised at the beginning that it

would be much more balanced if we had two deputy chairpersons to take into account all those considerations.

**THE DEPUTY CHAIRMAN:** Hon. Kabugo.

**MR. KABUGO (Nakaseke County):** Thank you very much, Madame Chairperson. I oppose the establishment of two Deputy Chairmen of this Commission. One person, whether he is a deputy, will be enough to handle this Health Service Commission plus the other elected new members. Madame Chairperson, I do not think that the services and responsibilities that are going to be held and conducted by the Health Service Commission is going to be more cumbersome to justify the appointment of two deputies because this is double expenses to the nation and the Ministry directly concerned.

**THE DEPUTY CHAIRMAN:** Hon. Dr. Kamanda.

**DR. KAMANDA (Bwamba County):** Thank you very much, Madame Chairperson. I would like to inform Hon. Dr. Kabayo who talked of why should the Health Service Commission have two members as deputy chairpersons when others have one. I want to refer him to the already compiled report on the Education Service Commission because when we were debating this Health Service Commission, its importance was in respect to the one of education. Those two commissions were assumed to be having a big role to play and if you see here, that is, on Education Service Commission, it talks of: "*A President shall appoint not more than two members.*" This is already passed. I think it is along those lines that also the Legal and Drafting Committee came up with not less than two persons on the Health Service Commission. Thank you very much.

**THE DEPUTY CHAIRMAN:** Hon. Maliro, let us first get clarification from Hon. Hashaka.

**MR. HASHAKA (Kibale County):** Madame Chairperson, I would like to be clarified by the Chairman of Legal and Drafting Committee why they felt very strongly to have or to recommend to the plenary to pass their recommendation of having two deputy chairpersons in the Health Service Commission, whereas it was not consequential to other commissions that were established in this constitution.

**THE DEPUTY CHAIRMAN:** Hon. Maliro.

**MR. MALIRO (Mwenge North):** Apart from what Hon. Kamanda Bataringaya has just said that it is in line with the Education Service Commission, there is a specific need in the Health Service Commission. I wish to inform my brother Hon. Hashaka that health service has two distinct divisions. It has one which is curative and another one which is preventive. These two are under one ministry but they serve in two different fields. So, I think they were wise enough to ensure that at least each of these will be represented. Madame Chairperson, in some countries, they have even gone to the extent of dividing them into two ministries but here we prefer to remain in one because we have one target but having two deputies, may be one from each discipline. I think it is the best thing and I think that is what the Committee had in mind. Thank you, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Obiga.

**MR. OBIGA KANIA (Terego County):** Thank you Madame Chairperson. Mine is a very brief comment. First of all, it is very difficult to support the argument of Gaston Maliro that because you have a curative branch and a preventive branch, therefore you must have two different chairmen and so forth because if you do an analogy on the Teaching Service Commission which we have also passed, you will be getting very many other deputy chairmen. Secondly, I would say that as much as possible - and this is mostly for the Technical Committee - I think that all these commissions being the same in status, in my view, their *structure* should be as near as possible to each other so that we have similarity in wording and also in status. That is all the comment I wanted to make Madame Chairperson. Thank you.

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

**MR. NGOBI (Presidential Nominee):** Thank you very much Madame Chairperson. I am surprised about the reasoning that is being given for having two deputies because I was here listening and the argument was that in the Health Service, you have two distinct levels of professionals. You have the doctors and the nurses. Usually, the interests of these two cannot be served by one and I think the idea was that when you have two deputies in the Health Service Commission, you

will be able to accommodate the interests of both the doctors and nurses? This is quite a very substantial wing of the Health Service and it would make the functioning of Health Service easier if you provide for two deputies in order to deal with these two different segments. That is what I had said. It has nothing to do with either the curative or preventive branches. Thank you very much.

**THE DEPUTY CHAIRMAN:** Information from Dr. Kazibwe.

**DR. KAZIBWE (Kigulu South):** I am sorry Hon. Ngobi is off the Floor but if you are to get the numbers of chairpersons on this by enumerating the different fields in the medical profession, then you will get hundreds because you get more as we get more specialisation. Because if you get another deputy because you have the nursing profession, what about the physiotherapists? What about the Orthopaedic Assistants? What about the Lab Technologists? So, I think that may be a bit of a problem. That is the information I wanted to give Hon. Ngobi so that he does not fail to sleep tonight for not catering for a specific line. Thank you.

**THE DEPUTY CHAIRMAN:** Hon. Ngobi had you finished?

**MR. NGOBI:** Yes.

**THE DEPUTY CHAIRMAN:** Hon. Mulenga.

**MR. NGOBI:** Sorry, I actually had finished but since you have given me the opportunity - *(Interruption)*

**THE DEPUTY CHAIRMAN:** No, because all of us are quite aware I have already given the Floor to Hon. Mulenga.

**MR. NGOBI:** I would like to assure the Hon. Member for Kigulu South that my contribution has nothing to do with my sleeping habits. *(Laughter)*

**THE DEPUTY CHAIRMAN:** Hon. Mulenga.

**MR. MULENGA (DP Delegate):** Thank you, Madame Chairman. I would like to also point out that the role of a deputy chairman is ordinarily to deputised for the chairman. It is not to represent interests. So, when we are reconsidering whether to have one or two chairmen, we should remember

that and I think that really no case has been made out for two or more chairmen. I would like to ask the Chairman of the Legal Committee to concede that really because the case has been made out and we do not engage in a prolonged debate on this.

**THE CHAIRMAN:** Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** Madame Chairperson, these are not my personal views. It is the doctors who appeared before the Committee who convinced them that there was a necessity for two deputy chairpersons but for me if the doctors think it is not necessary, and one Hon. Member who happens to be a distinguished doctor has said no, I have no objection if we convert it to one. But these were not my personal views.

**THE DEPUTY CHAIRMAN:** Hon. Mugenyi.

**DR. MUGYENYI (Isingiro North):** Madame Chairperson, I think as the Chairman has said, really I do agree with what Hon. Kazibwe said that the main essence of this should not really to go with the disciplines. The background to it was to cater for the technical side and the administrative side but from what has been expressed on the Floor here, I think we should consider and move with one deputy chairperson.

**THE DEPUTY CHAIRMAN:** Thank you very much. So, I put the question on (3) because we are amending to have one instead of two. That is what was on the Floor and I am saying that we amend (3) to have one deputy chairperson rather than two.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** So, two is dropped and we insert one. Number (4) Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** Madame Chairperson, Clause (4): It is recommended that; "a person is not qualified to be a member of the Health Service Commission unless she or he is of a high moral character and proven integrity and has substantial experience in Health Service." This again, Madame Chairperson is a recast of the principles that we have enacted elsewhere in other commissions. I beg to move.

**THE DEPUTY CHAIRMAN:** Any problem Hon. Maikut?

**MR. MAIKUT (Kween County):** I am again seeking clarification from those who may give me, the rationale for only getting people who are specialised in health services taking up all the positions of the members of the Commission. I do not know whether there could be a rationale where you could have a patient for example, if this can be useful. So I think - in my view, there is need to have a two pronged kind of membership to that Commission rather than only confining it only to the professional side. Thank you.

**THE DEPUTY CHAIRMAN:** Hon. Mugenyi. Any justification?

**DR. MUGYENYI (Isingiro North):** Madame Chairperson, that argument came up I think when we were formulating this and it was meant to mean experience in Health Service, not necessarily being a doctor, a nurse or anything. There are many people who work with health service management and these are not necessarily medical workers or health workers. It is intended to be wider than what Hon. Chebet imagines. For instance, I give an example, currently in the Ministry of Health, there is an Assistant Commissioner in charge of Engineering Section. This man is an engineer but by virtue of that exposure, he has got that kind of experience on how health services are managed. When you take an example of other people, we have other people for example who work in the stores management. These people some of them are not actually medical workers but they have that kind of experience. If somebody has been a permanent secretary in the Ministry of Health for quite some time, he has that exposure to health services. He does not have to be a medical worker.

So, the essence of this was not to mean it must be a health personnel. It must not be a doctor, a nurse or any other person but anybody who has got in touch with health service management because the purpose of creating this Commission, Madame Chairperson, was to answer the technical areas and the special needs of this group of public servants and therefore, there was a need to put on somebody who has got some exposure to health service management. So, this should not be taken to mean nurses, doctors or health inspectors. No! Somebody who has got some exposure to the health service delivery. I thank you.

**THE DEPUTY CHAIRMAN:** Thank you very much. Hon. Kiyonga.

**DR. KIYONGA (Bukonzo West):** Thank you very much, Madame Chairperson. First, I would like to thank Hon. Delegates for having taken the fundamental step of creating a Health Commission but having done that, I think we should not over do the job. I have listened carefully to my colleague who has just been on the Floor but on the issue of the type of people to be on the Commission, I do not agree with him 100 per cent. A Commission is basically a policy setting body. It is going to advise government on the best way to treat the health workers, on the best way to run the health services. So, I agree that we should have professionals and people who know something about health. I do not agree that it should be that exclusive because we have two parties here, the professionals and we the lay people - the consumers and we have a stake on how the health services are going to be run. So, for us to set a situation where we think it is only either doctors, nurses and people who have had the opportunity to work closely with health, we would be missing a great opportunity.

We are going to set conditions of service which have to be related to conditions of service elsewhere. You will therefore benefit by having an input from people who know about finances but who may not necessarily be health workers. Ultimately, a successful health programme should put the responsibility of health care in the hands of the people themselves and therefore, when you have a commission which is well balanced, having both professionals and the consumers of health, I think a better job would be done. Therefore, I would wish to persuade the Committee and the movers of this Motion that we should drop this clause "*substantial experience in health services.*" I beg to move Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Is that seconded? So, it is seconded that we drop - we stop at integrity. Any problem? Okay, I put the question that (4) stands part of this Constitution as amended.

*(Question put and agreed to)*

**PROF. KANYEIHAMBA:** Thank you, Madame Chairperson. In Clause 5, it is proposed that: "*a person holding any of the following offices shall relinquish his or her position in that office on*

*appointment as a member of the Commission.*

*a) A member of Parliament or*

*(b) a member of the Executive of a Political Party or a political organization,*

*(c) A member of any board or other authority responsible for the management of any government hospital or similar establishment and or public officer.” I beg to move.*

**THE DEPUTY CHAIRMAN:** Hon. Malinga.

**MR. MALINGA (Usuk County):** Madame Chairman, I have a little problem with “(c) *that a member of any board or other authority responsible for the management of any government hospital.*” I would rather suggest that we drop the words “*of government*” so that even people responsible for managing private hospitals should not be on this board. So, that if Malinga has a hospital, he should not find his way into the Health Commission and then look for the best doctors and take them to Malinga’s hospital.

**THE DEPUTY CHAIRMAN:** There is that suggestion by Hon. Malinga. Can we clear that one. Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** I think Madame Chairperson, that is a good proposal. I would accept it. I am accepting that we delete the word “*government*” so that it is “*management of any hospital*”.

**THE CHAIRMAN:** I was asking if there was any opposition from any other Member. Okay, Hon. Mulenga.

**MR. MULENGA (DP Delegate):** Madame Chairperson, I wanted clarification from Hon. Malinga whether he sees the Service Commission as concerned with appointment to private hospitals? Because if Malinga of Malinga Hospital is on this Service Commission, considering the terms of service, promotions, recruitment for government hospitals, not for private hospitals. So, I do not see his concern in his proposed amendment to prevent managers of private hospitals being on such boards/commissions.

**MR. MALINGA:** I think I had made my point. The point is that if you get on to the Commission, generally if you look at these commissions, the tendency is to get onto those commissions, people who are not ordinarily active in their own lines. In

the Public Service Commission, you take as far as possible people who are towards retirement age or have actually retired from the public service so that they do not have an interest in whatever they do so that after leaving the Commission, he will return and take benefits out of what he may have proposed for the Public Service while he is in the Public Service. So similarly, a person running a hospital should not sit on the Health Service Commission because he can misuse his position on the Commission to get the best personnel for his hospital. This is the point I was making and that is why we are barring here a person who is on the management of a government hospital who has not even any proprietary interest in that hospital but why is it proposed that a person who may just be a resident of an area and you are elected to the Management Committee of that hospital and according to this provision, you are not allowed to sit on the Health Service Commission? Why? Because you have an interest in your hospital and you may abuse your position to benefit the hospital of which you are a member of the management committee.

**THE DEPUTY CHAIRMAN:** Yes, Hon. Kazibwe.

**MRS. KAZIBWE (Kigulu South):** Madame Chairperson, the Health Service Commission has a similar role to that of a Teaching Service Commission in that when we are looking at the membership, we do not look at it in the way of saying if a Ugandan goes to Malinga’s hospital and there are very good doctors there, then there is inequality because there are bad doctors in Wasswa’s hospital who is a neighbour because the medical service, if it is good wherever it is - whether in private hands or not, it is good for our people. The same with the teaching service and Madam Chairperson, I believe that it would be a long time before we get elderly people who are retiring from any active service in this country. Government is divesting itself from most of the services and it is saying whoever is capable should go out and serve the people in their private capacities. So, you are an entrepreneur and you can actually open a hospital, why can we not tap your services to be able to even help the whole nation to plan? So, Madame Chairperson, I do not believe that a private practitioner per se should be barred from sitting on the Health Service Commission because as we talk now, there is no law which bars people from treating patients anywhere; even on the streets we treat them and that would be taken as private practice as well. Thank you.

**THE DEPUTY CHAIRMAN** Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** Madame Chairperson, I wanted Hon. Kazibwe to explain to me because there are times when the needs of the government hospitals may conflict with needs of private hospitals. I have in mind, for example, at the moment we have an outcry that medicines are moved from government hospitals and sold in private hospitals. Now, if you were to have somebody coming from private practice and being on this Commission, may he not be very soft on regulations which are likely to cure this defect? So, if you are going to remove members of the government hospitals from this Commission, should you not use the same reason as you have used to see all these are interested parties and therefore, we should remove them? Unless you are arguing that this whole clause should be deleted so that there is no bar against anyone serving either in government hospital or in private hospital.

**MRS. KAZIBWE:** Madame Chairperson, I would like to answer Hon. Kanyeihamba by saying that any doctor who removes drugs from a government to take it to a private one is a thief and there is a normal process of the law to take care of that and if you look at this same article 196 Subclause (4), a person is not qualified to be a member of the Health Service Commission unless he or she is of high moral character and proven integrity. If we have passed that article which I think you already have, then, whoever has passed this, by the time you get down to (c) if that Health Service Manager of a private institution is stealing drugs, he is seen to be poaching doctors from government hospitals to treat his private patients which I do not believe that there is a doctor who owns any patient, a disease is a disease it does not belong to anybody, I do not believe that that person should actually be barred from sitting on this Commission. Madame Chairperson, I would like to go further to say that the medical profession has been so close until now when members of the C.A. have been sensitised to need to even have a commission which will get more people to know about the profession. That is why I supported my colleague Dr. Kiyonga in that this is a profession where you have the only people who swear like they are in a court of law. If people do that to protect the interest of the healthy lives of people, the moment they divert, then they should actually be taken care of by the courts of law.

**THE DEPUTY CHAIRMAN:** So, Hon. Kazibwe are you in for the retention of government?

**MRS. KAZIBWE:** Yes.

**THE DEPUTY CHAIRMAN:** Okay. Hon. Bageya.

**MR. BAGEYA (Kigulu North):** Thank you very much, Mr. Chairman. I just wanted to put a question as to whether under (5), being a member of the Health Service Commission is going to be a full time job and if not, elsewhere Members of Parliament have been allowed to be directors on boards outside. If it is not a full time job, in the event that this is not a full time job, why have they categorized some people that cannot be on this Health Service Commission? What is the criteria?

**THE DEPUTY CHAIRMAN:** Are you answering Hon. Bantariza?

**MR. BANTARIZA (Buhweju County):** Thank you very much, Madame Chairperson. I would like to inform the speaker that this is a full time job and it is supposed to - the member of the Health Service Commission is supposed to stay there for about 4 years and then his membership is renewable. So, it is a full time job. Thank you.

**THE DEPUTY CHAIRMAN:** Hon. Ruzindana.

**MR. RUZINDANA (Ruhama County):** Madame Chairperson, the previous information is partly untrue. Madame Chairperson, we would not expect that all these members would be full time. It is usually the Chairman that is full time and for example with the decentralisation that is taking place, it is very difficult to have six people full time members of the Health Commission and therefore, Madame Chairperson, I think that is a correction that should be made. Secondly, Madame Chairperson, I wanted to make a comment on this "government" thing. I think it is correct that we should delete "government". As we know now, many doctors work at Mulago, at Rubaga, at Nsambya and so on and you may find that somebody on the board at Mengo Hospital might be actually a boss of someone who is at Mulago also and if you place him or her in the Health Service Commission and he has experienced problems with this particular doctor, for example at Mengo Hospital and now comes to the Health Service Commission and this

person's promotion is before him or her, I think it causes a conflict and it is right we should delete this word "government" so that anybody who has a role to play in any hospital or similar establishment does not play a role in a number of institutions like the Health Service Commission and then the boards of other private hospitals. I thank you, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Clarification Hon. Kazibwe.

**MRS. KAZIBWE:** Madame Chairperson, I would like to make a clarification here in that if you are a medical personnel, you do not retire. You practice until you die. Wherever you find a patient you practice unless we are saying that we will not have any medical personnel on this Service Commission. I have not seen a doctor who said, because I am no longer serving in Mulago because I have been retrenched or retired, I am not going to practice anywhere. So, what exactly you are saying is that you will not get anybody on this who is giving health service like delivery. It is a life long job.

**MR. RUZINDANA:** Madame Chairperson, (c) is talking about a member of any Board or any other authority. It is not talking about a person qualified as a medical practitioner. It is any member whether doctor or lay person who is on the Board or any other institution or authority of some other medical facility. So, it does not really refer to professionals only. It is anybody else who has authority in running a medical facility elsewhere within the country.

**THE DEPUTY CHAIRMAN:** Hon. Mugenyi.

**DR. MUGYENYI (Isingiro North):** Thank you Madame Chairperson. I think the content of (c) - if the word "government" is removed, it will be very restrictive in my opinion because when you say any other authority responsible for the management of any hospital or similar establishment, what is a similar establishment? If I have a nursing home and I am the only director of that nursing home, I can not be prohibited from serving on this because it is very difficult. The demarcation of private health units is very difficult; Nursing Home, a clinic, a maternity home. So, I find it a bit restrictive once we remove the word "government". I do not see Madame Chairperson, the problem of - if somebody served in public service, he reached 55, he

retired and by virtue of the kind of job doctors and other medical workers do as Hon. Wandira Kazibwe has said, the man is still serving and he is working in his private Nursing Home. He is the director of that Nursing Home. He is he allowed by this clause to be a member of this Commission and you will find these are the people with the proven integrity we have talked about; who have had wide experience. So, in my view, I think it would serve the purpose. In order not to create ambiguity, we should leave the word *government* there so that it is Members who are working as members of the Boards of government hospitals and other establishments similar to that that are prohibited. Otherwise, you are going create a problem because as Hon. Kazibwe said, medical workers can never retire. The man is almost about to die when people are still looking for him to treat. So, I do not see why - in my view I think we should recoin the word "government" in Clause (c).

**THE DEPUTY CHAIRMAN:** Hon. Mugenyi, to make things simple, what is your definition of "similar"? What are those similar institutions? After that we help the Members to clear their minds.

**DR. MUGYENYI:** Madame Chairperson, to me that word is vague - "Similar establishment". I am envisaging a situation like if you talk of "any government hospital" or "similar establishment", there are two scenarios. If you are talking of a similar establishment also to be a government establishment, I would imagine somebody, say for instance, working with the Uganda Pharmaceuticals Ltd, that is an establishment which has a relationship with health but it is not a government hospital. That is, if you look at these establishments being government. Somebody working with Uganda Medical Stores, somebody working with Uganda Pharmaceuticals Ltd, that is a similar establishment from the government side. But if you are widening it to say that "similar establishment" means any unit that provides health services, then the stretch is so wide. So, I am saying the thing is vague.

**THE DEPUTY CHAIRMAN:** Hon. Kanyeihamba, what do you have to say given that vagueness because "similar" can be interpreted as Mulago, Namirembe, Kibuli because they all giving health services.

**PROF. KANYEIHAMBA:** I think we have to look at the functions which this Board does which is largely to regulate the health service and to advise the president on his functions relating to health service. Among other things, obviously, I assume they would have to deal with disciplines of members and so forth. The emphasis which I think that Hon. Ruzindana made is very important. We are not saying that anybody is disqualified if they are appointed here. Incidentally, everybody is qualified except that when they are appointed, they should cease to hold these positions. The point that is being made is that these members of the governing board of other establishments, whether you call them health centers or whatever. We are not saying that anyone who is working at Nsambya or at Mengo is disqualified automatically, no! Only those selected few who are on those Boards. We assume that those Boards are performing similar functions in relation to those private hospitals or institutions and it would be presumably calling too much on them but in addition to their practice, and their management skills on these Boards, they should in addition be members of the Commission.

thought that that is really the thrust of the argument.

**THE DEPUTY CHAIRMAN:** Hon. Bageya.

**MR. BAGEYA:** Thank you very much, Madame Chairperson. I posed the question here which Hon. Basaliza answered but unfortunately Hon. Ruzindana said to the contrary. My point here is very clear. If this is not a full time job and possibly it is only a full time job for either the Chairman and the Deputy, why do we bundle up everybody that is going to be on this Commission to relinquish whatever job they may be serving elsewhere and we say that they cannot hold those offices if they come to this Commission? I would personally suggest Madam Chairperson, with your permission that if it is the Chairman who will be full time with the deputy. Other than saying "*a person holding any of the following offices shall relinquish his or her position*", we should specify that person who is going to be there full time rather than get all these other Members who are not supposed to be there full time because really I do not think it will be fair for somebody who is going to work part time to have to relinquish whatever job they are doing purely because they are members of this Commission. Unless the Chairman can clarify to me why others should relinquish their jobs if they are not

going to be part time. I do not seem to be in favour of this Motion.

**THE CHAIRMAN:** Hon. Maliro.

**MR. MALIRO:** Thank you, Madame Chairperson. If I remember very well, all the commissions we have established, we have used the same formulation. I am wondering, is it only the Health Service Commission where the Members are not full time and they are full time for Education Service Commission and they are full time for Public Service Commission? What is special about this Commission that is not the same with others?

**THE DEPUTY CHAIRMAN:** Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** I believe that Hon. Bageya's point of clarification does miss the point of why this exclusion is recommended. It is recommended not because they are part time or not but because of the possible bias that may be generated because of the office they hold. If you are a Member of Parliament and at the same time you are a Member of this Commission, the Movers of the proposals saw that they could be biased on political grounds. That is why for example, in (b) if you are a member of the executive of a political party, the idea to prevent you is that you may use that position for political purposes. It is for that reason rather than whether the job is full time or part time.

**THE DEPUTY CHAIRMAN:** Yes, Hon. Byarugaba.

**MR. BYARUGABA (Isingiro South):** Thank you Madame Chairperson. I have a little experience in as far as Public Service affairs are concerned which I would like to share with you honourable Members. Most of you have been running around as to whether the Public service, the Teaching Service or the Health Service Commission is full time or a part time. Madame Chairperson, the little I know about these commissions is that they are in actual fact full time - it is a full time job, Madame Chairperson. These are people who are given offices, these are people who are given facilities like vehicles - each one of them. And Madame Chairperson, when we were passing this, it was on that basis that these people are going to be very busy. It is a very big ministry, the service is so wide that we created this. Now, all of a sudden,

some Members are saying it is not a full time almost trying to tell us that we should not have, after all, created it. I want to allay all these other considerations that it is not a full time job. It is a full time job for four years after which they can either be renewed only for once, if they are lucky or left out entirely. But the main argument here is about membership on this one - the qualifications.

Madame Chairperson, you will realise that just like in the Public Service Commission, a member actively serving in the Public Service of Uganda is not supposed - actually is disqualified from becoming a member of the Public Service Commission. Otherwise, his position will be compromised. There is likely to be conflict in his service to the Commission and also to the Public Service as a job. If you say he is an administrative officer and at the same time he sits on the Public Service Commission. You can imagine what he would do to his colleagues with whom he is competing or to his colleagues who are his friends if it comes say, recruitment, promotion, discipline and what have you! So, here I think what we should concentrate on is that these people working in the medical service, that one being run directly by government, should not be members of this Commission. Remember, emphasise the words "*similar government establishments*". That one should be the only emphasis but otherwise, doctors, Madame Chairperson, as the Honourable Member from Kigulu said, they work throughout their lives. They are doctors. Even Hon. Dr. Kisekka, I think, still operates on people despite the fact that now he is in Temangalo. If you go there with a headache or a stomach problem, he will treat you. But that should not disqualify him from becoming a member of the Health Service Commission.

So, the word to emphasise is *a government health unit - a health service delivery* but directly connected with government. If you have a private hospital like some people have in Kololo here, my friend hon. Owor has a hospital there of his own. Surely, he should qualify to work as a Member - to be appointed a member of the Health Service Commission! With that small clarification, Madame Chairperson, I beg Members to understand this that we concentrate mainly - it is strictly directly connected to only institutions - medical, health institutions of government and similar others of that nature but also run by government. I beg to move. I thank you, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** You want me to clarify to you or you are clarifying? Okay, Hon. Bageya.

**MR. BAGEYA (Kigulu North):** Madame Chairperson, I am supposed to vote on this Motion and my point has been to be clarified in no uncertain terms whether this is a full time job and somehow, by omission or by commission, Hon. Kanyeihamba who is the Chairman of this Committee has evaded answering that question. I would like to vote when I am very clear whether this is part time. You have heard already about three people saying different things in different forms. I would like this House to be totally informed as to whether this Commission is a full time job - from the Chairman of the Committee so that at least by the time I vote, I know exactly which way to go. That is why I have been labouring to answer this question Madame Chairperson. Thank you.

**THE DEPUTY CHAIRMAN:** Okay, let us look at it from the other side of the coin. What are the functions of all the commissions we have passed? Are they full time or part time? We have decided all of us here. We should have an answer.

**AN HON. DELEGATE:** Madame Chairperson, I think we have agreed and we have seen from the little explanation I have given that these people are on a full time basis.

**THE DEPUTY CHAIRMAN:** Hon. Bageya, why do you want an answer from Hon. Kanyeihamba? We are all debating here, anybody who has an answer, gives the answer.

**MR. BAGEYA:** Everybody has got his or her views. Hon. Ruzindana gave his own view, which - *(Interruption)*

**THE DEPUTY CHAIRMAN:** No, no! Let us look at it this way. You answer the question I asked first. According to you, what has been the decision on all the Commissions we have instituted? Are they part time or -

**MR. BAGEYA:** Madame Chairperson, when come to Boards, Members of Parliament are free to be members of the Boards. That is what we voted on. Now, here this is a Commission where Members of Parliament are not supposed to be on that Commission. They have to relinquish. Fair enough, I do not

mind which way it goes but I wanted to have my conscience very clear and that is why I was insisting on Hon. Kanyeihamba to give me an answer because with all these are opinions, I would like a specific answer to this particular question Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** Madame Chairperson, nowhere in this Constitution for these Commissions including this one have we said that they are part time. However, if you look at the functions we have given them and the tenure office, it is on a full time basis. The President in functioning on appointment of these people, when these Commissions are examining the misbehavior, misconduct of members of the services, you cannot say that is a part time. It is full time. So, I would say that their functions are full time, Madame Chairperson and I could not be more clearer than that. So, I think that will now help Hon. Bageya to cast his vote in the right direction.

**THE DEPUTY CHAIRMAN:** Hon. Byarugaba.

**MR. BYARUGABA:** Thank you, Madame Chairperson. I wanted to further clarify that some of the functions to be carried out by this Commission include recruitment of staff which is certainly full time. Recruitment goes on almost every other day. Second, Mr. Chairman is to discipline staff. Disciplining staff cannot be part time. So, is promotion and so is putting forward terms and conditions of service for the staff concerned. I think Madame Chairperson, with those few clarifications here and there, Hon. Bageya should be satisfied and maybe we put this to vote. Thank you.

**THE DEPUTY CHAIRMAN:** Hon. Ruzindana.

**MR. RUZINDANA:** Madame Chairperson, I had wanted clarification from Hon. Kanyeihamba. At one time he was a member of the Judicial Service Commission. I would like to have clarification from him whether at the time he served on the Judicial Service Commission, he was full time. We have in this Constitution established a Judicial Service Commission and he just said that all the commissions we have established will have full time commissioners and there is the example of the Commission which he served. I would like to have

clarification, since he was a member of a commission of that nature, whether he or the majority of members on that Commission were full time.

**THE DEPUTY CHAIRMAN:** Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** Madame Chairperson, I have been very careful as always. I want to say that the functions which they perform are full time and when I was a member of the Judicial Service Commission, I was doing full time job on these functions of the Commission. So, that does not deviate from what I have said but Madame Chairperson, really for me, my explanation which I gave as the reasons for making sure that when these people are appointed they do not continue in these positions was not because of whether it is a part time or full time job but because of the conflicting interest that may arise. That really is the rationale or reason that I gave, not because whether they were part time or full time. Even though I know that their functions are full time.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, I think we better pronounce ourselves whether we leave in the word "government" or not. What is on the Floor is that we delete the word "government."

*(Question put and negated)*

**THE DEPUTY CHAIRMAN:** So, the word "government" remains. We are moving on to (d). So, the word "government" is retained. Another amendment?

**MRS KAZIBWE:** Madame Chairperson, I would like to move that we add the word "government" between "similar" and "establishment" so that 5(c) reads: "*The Member of any board or other authority responsible for the management of any government hospital or similar government establishment*". I beg to move.

**THE DEPUTY CHAIRMAN:** Okay, now I put the question on (c). That it do stand part of this Constitution.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** The amendment is, we are inserting the word "government". Now (d) - Public Officer.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** So, (d) is also taken. Can we go to (6).

**PROF. KANYEIHAMBA:** (6) Madame Chairperson, reads as follows: *"A member of the Health Service Commission shall hold office for four years except that for the first members appointed, three shall be appointed to hold office for three years which shall be specified in their instruments of appointment."* The clumsy wording here is to ensure that from the word go, there is continuity of the Commission so that there is never going to be a break of those serving and those coming in. There is always those staying in who have overlapped with the others. That is why this wording is put here. I beg to move Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Kabugo.

**MR. KABUGO (Nakaseke County):** Thank you, Madame Chairperson. I would like to make an amendment on this subclause to read: *"A member of the Health Service Commission shall hold office for four years."* To stop there but again to insert the formulation concerning the appointing of other members to serve for three years, we have not catered for it any where in other commissions and is this at all necessary, it is a matter for Parliament to decide.

**THE DEPUTY CHAIRMAN:** Is that seconded? Your Motion is not seconded. Hon. Mugenyi, I thought you had another problem. Okay, now we move to (7).

**PROF. KANYEIHAMBA:** (7) Madame Chairperson, reads that: *"the emoluments of members of the Health Service Commission shall be prescribed by Parliament and they shall be charged on the Consolidate Fund."* I beg to move.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** Proceed to (8).

**PROF. KANYEIHAMBA:** Madame Chairperson, in light of what we have already decided, I think that (8) is deleted by subsequential amendment because it was formulated on the basis that there would be two deputy chairpersons but we have now deleted that. We are only having one deputy and therefore, it is not necessary for the

President to designate because the Deputy Chairperson will automatically function as in other commissions.

**THE DEPUTY CHAIRMAN:** So, we do not have to vote on that one because it is deleted consequentially. Okay, (9)

**PROF. KANYEIHAMBA:** In (9) Madame Chairperson, it is recommended - *(Interruption)*

**THE DEPUTY CHAIRMAN:** Yes, Hon. Karusoke.

**MR. KARUSOKE (Ntoroko County):** Madame Chairperson, thank you. (8), Madame Chairperson, supposes that in the absence of a Chairman and a Deputy Chairman, the President appoints an acting chairperson. I was of the view that instead of this, because the President is a very busy person and very difficult to see, we delete this so that members of the Commission appoint one man amongst themselves to chair for that day.

**THE DEPUTY CHAIRMAN:** But we have deleted (8)

**MR. KARUSOKE:** I do not know where -

**THE DEPUTY CHAIRMAN:** I said it is deleted consequentially.

**MR. KARUSOKE:** Thank you.

**THE DEPUTY CHAIRMAN:** Hon. Kanyeihamba.

**PROF. KANYEIHAMBA:** Madame Chairperson, it is proposed in (9) that: *"The members of the Health Service Commission may be removed from office by the President only for:*

*(a) inability or failure to discharge the functions of his or her office or*

*(b) misbehavior, misconduct or conduct unbecoming of the holder of the office."* I beg to move.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** Now, I put the question on 196, as amended. Yes, Hon. Malinga.

**MR. MALINGA (Usuk County):** Madame Chairperson, I beg to move that we introduce a new clause to provide for a secretary to this Commission

to read that "*there shall be secretary to the Health Service Commission who shall be appointed by the President on the advice of the Public Service Commission.*" I beg to move. Because the work of the Commission, the records and everything are kept by the secretary and the secretary will be continuous while the members will be changing.

**THE CHAIRPERSON:** So, should it be (10)?

**MR. MALINGA:** No, it should be (9) now. Some Members suggest that I should read it over again. What I am saying is that; "*there shall be a secretary to the Health Service Commission who shall be appointed by the President on the advice of the Public Service Commission.*"

**MR. NGOBI:** Madam Chairman, can I debate the Motion with your permission?

**THE CHAIRPERSON:** The Motion is on the Floor, so you can proceed.

**MR. NGOBI:** Thank you, Madam. I would like to oppose the suggestion on two grounds. First of all, I do not remember that we have provided that post in the previous Commissions, but the second reason is that a Secretary to a Commission like this is an Official appointed by the Commission and he should keep his duties and the preparation of the work of the Commission under the direction of the Chairman. Now if this one is also appointed by the President, the direction is going to be a bit difficult to give. This is a servant of the Commission, he or she must keep records, must act according to the direction of the Chairman. So, I think in principle, it will be wrong for us to provide for such a post in the Commission and under the Constitution. Thank you.

**MR. MALINGA:** Madam Chairperson, it is not true that we have not provided for these offices in the Judiciary of Service Commission for example. In Article 175(3), we provided as follows: "*There shall be a Secretary to the Judicial Service Commission who shall be appointed by the President on the advice of the Public Service Commission.*" The reason is that unless we provide for this office, if he is a Secretary appointed by the Commission, I think that will be at a very low level. We are looking for a very responsible officer whose appointed should be well considered by all concerned. It is true that Hon. Ngobi who has had a wealth of experience as

Chairman in the University Council in Makerere may be used to the Makerere situation where they appoint their own Secretary. But in all this other establishments, as far as I can remember, the Public Service Commission appoints a public officer to be the Secretary to the Commission. That is the tradition that I would like to continue. Now, while we say that it is the President who does it, it is not to say that the Commission itself will not have a hand in it. But ultimately, the President will be involved in the appointment. The suggestions can come from the Commission, go to the responsible Minister who will pass it onto the President and that way, the President does not originate an appointment from the air. *-(Interruption)-*

**AN HON. DELEGATE:** Point of information! I would like to give my Brother information that the rank of a secretary of say, Public Service Commission or Judicial Commission or even now the Health Commission is of a super scale as it used to be called, and all those appointments are made by the President on the advice of the Public Service Commission.

**MR. MALINGA:** Thank you for that information. I just wanted to reply that we have provided for all the others. Even in the existing Constitution, there is a Provision made for a Secretary to the Teaching Service Commission and the Public Service Commission.

**MR. KARUSOKE:** Madam Chairman, I support this amendment because in the existing establishment of Commissions, the Public Service Commission and the Teaching Service Commission, there are Secretaries who are very important and officers in those Commission are at the rank of Permanent Secretaries and in some cases they are also accounting officers. They are very, very responsible. I do not know why it was such a very big omission on our part not to provide the Commissions in this Constitution with secretaries. I think it was a very serious omission and we should not maintain that omission. We should provide for secretaries to these commissions because they are very, very important. They are the most technical people in those Commissions. They know the inside and out; they keep all records and they know the procedure and everything. While Members of the commission come and go, these people stay and they are permanent and pensionable. Therefore, I support this Madam Chairperson.

**MR. ETONU BENEDICT (Auria County):** Madam Chairman, I would like to move a Motion to move an amendment to Hon. Malinga's amendment that: *"there shall be a Secretary to the Health Commission who will be a public officer"*.

**DR. WANDIRA KAZIBWE:** Madam Chairperson, I think for purposes of consistence, let us go with the formulation of Hon. Malinga who has tried to match his amendment to other commissions that we have created. A Secretary to this Commission appointed by the President, like in other Commissions on the advice of the Public Service Commission like in other Commissions, is indeed a Public Officer. This Secretary is not going to be a political appointee because the Public Service Commission indeed appoints or advises the President to appoint Public Officers to serve in public positions. Ministers are not appointed on the advice of the Public Service Commission. I believe that Hon. Etonu should be satisfied with that and we move ahead to vote on Hon. Malinga's amendment.

**MR. SABITI:** Madam Chairperson, we did not provide for the office of the secretaries in Public Service Commission and Teaching Service Commission. Here it was deliberately left out particularly for the Committee which handled this area. The reason is we have government institutions which take care of this interest. If we did that, maybe we would enumerate all the offices in these Commissions. We need a secretary, accountant and so on. But normally, in the Public Service Commission, the case has been that Government seconds a person who is a Permanent Secretary rank and he handles the administrative functions of the Commission. I think it will continue and is supposed to be the same. If you look at (5) on the last Page, we say: *"subject to the provisions of this Article, Parliament shall make provisions by Law for regulating the functions of the Health Service Commission and for describing the composition of the Health Service Commission"*. Now, it is under this that a Secretary for the Commission and other people the personnel wanted in this Commission can be appointed. So, I do not see any reason why we should labour hard to provide for this particular office. If we do then we have to go back and provide for the same other Commissions, that is the Teaching Service Commission and the -*(Interruption)*-

**MR. CHANGO MACHYO:** Madam Chairman, I thought that Hon. Malinga made it very clear that

this Secretary has been provided for in other Commissions. So, I do not see the argument.

**MR. SEBIDATA:** Madam Chairman, I would not want to agree with Hon. Etonu on his proposal to insert "Public Officer" because in 196, 5 (d), we have already that a person holding any of the following offices shall relinquish his or her position in that office on appointment as a Member of the Commission if (d) is a public officer. So, if we reinsert public officer here, we would be contradicting ourselves.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, I have some advice here from the Technical Committee that the Public Service Commission and the Teaching Service Commission do not have secretaries. So, it is only the Judicial Service Commission, due to the nature of its work and it is the view of the Technical Committee that it is not necessary to provide for a Secretary in a Health Service. It will be inconsistent. So, I now put the Question that Article 196 as amended do stand part of this Constitution.

*(Question put and agreed to)*

**PROF. KANYEIHAMBA:** Madam Chairman, Article 197 and its clauses are about the functions and duties of the Health Service Commission and it is recommended that we provide in Article 197 Clause (1) that: *"subject to the Provisions of this Constitution, the Health Service Commission shall;*

*(a) advise the President in performing his or her duties in relation to the Health Service Commission,*

*(b) Have power to appoint persons to hold or act in any office in Health Service including the power to confirm such appointments to exercise disciplinary control over those persons and to remove them from office.*

*(c) To review the terms and the conditions of service, standing orders, training and qualifications of the Members of the health service and matters connected with their management and welfare and make recommendations on them to Government.*

*(d) To perform such other functions as may be described by this Constitution or any other Law."*

I beg to report, Madam Chairman.

**MR. SABITI:** Madam Chairman, may I be clarified from the Chairman. In (a) you are saying this

Commission will advise the President in performing his duties, but in (b) you are saying the Commission has the power to appoint persons to hold or act. Now here who is the appointing authority?

**MR. KANYEIHAMBA:** I would like to inform Hon. Sabiiti that if you go under the Provisions of the Constitution which we have passed, there are certain functions and duties which the President, as such, has to perform and some of these relate to the Health Service, and that it is in respect of those that Clause (a) is empowering the Commission to advise the President. However, under (b), the Constitution is directed to give them information to appoint people in the Public Service Commission to make these appointments in the Health Service and therefore, these are unconnected with the other wider powers of the President.

**MR. RUZINDANA:** Madam Chairman, the formulation in (b) here is a rerun of the formulation of Committee One which if you may recall, Madam Chairman, the Report was not exactly discussed in whole. But when we discussed the Public Service Commission, you see Article 197(1)(b), of the Draft. That is the wording, and we had originally removed this power from the President to the Commissions. But when we discussed the Public Service Commission, this position was revised and the power was restored to the Presidency to appoint persons and so on. I would like to suggest that this position should be reconciled with the position we took with respect to the Public Service Commission because here we do not seem to have synchronized it with the position we took with regard to the Public Service Commission. I think there is need to do that. Thank you.

**MR. KANYEIHAMBA:** I take the very pertinent point made by Hon. Ruzindana. After all, the whole point of this exercise with minor exceptions was to formulate the Provisions about the Public Health Commission to be similar to those of other Commissions. Therefore, if what he is saying is right, I think there should be no problem. We shall do likewise so that they are similar and identical to those that have been provided in the Commission.

**THE DEPUTY CHAIRMAN:** Does that mean that we just transfer what is there to this or you are saying that these are similar to -

**PROF. KANYEIHAMBA:** Madam Chairman, only in relation to (b) because here (b) was suggesting that these powers are to be exercised by the Commission. But according to the information we have received, actually the previous position where these powers are to be exercised by the President was confirmed under the Public Service Commission. I am suggesting that we should have the same formulation as we had in the Public Service and the Teaching Service. So, it is similar.

**MR. MUGYENYI:** Madam Chairman, I just wanted to add on the words of the Chairman that this formulation was in line with the formulation of other Commissions like Teaching Service Commission because it begins by "*subject to the Provisions of this Constitution...*" That Clause (b) is not hanging. It is exactly similar to the clause which is under the Teaching Service Commission which says, "*subject to the Provisions of this Constitution, the Teaching Service Commission shall have power to appoint persons...*" So, it is in line with that that this formulation was - *(Interruption)*

**MR. KITARIKO:** Madam Chairman, the Provision which we apply will be in similar terms as Article 197 - the Public Service Chapter.

**MR. MUGYENYI:** Madam Chairman, personally, the provision I was reading was 195 which was talking about the Teaching Service Commission. I was saying that this Clause is similar almost to the clause under the Teaching Service Commission and it is not hanging as I said.

**THE DEPUTY CHAIRMAN:** We have the Public Service Commission, Teaching Service Commission. Are they at par?

**PROF. KANYEIHAMBA:** When I responded to Hon. Ruzindana's point, I assumed that he was talking about what they did in their Committee having considered the Draft Constitution. But I see that Hon. Dr. Mugenyi is reading from the original Draft of the Odoki Report.

**MR. MUGYENYI:** I think there is no that particular position. I imagine it was not changed. Secondly, I think that formulation of having the Health Service Commission and the Teaching Service Commission under Public Service, I seem to understand it was not taken. These three Commissions are taken at par. If I read correctly the recommen-

dations of the Technical Committee, the three Commissions are being taken at par because they are looking after different officers. So, we should be consistent when we are giving these provisions and personally I do not see any contradiction since it is being subjected to the provisions of the Constitution meaning the powers of the President to appoint through the Public Service Commission are still inherent through subjecting the Clause to the Provisions of the Constitution. So, I wanted to allay the fears of Hon. Sabiiti and Hon. Ruzindana that there is no contradiction and we are consistent with other Commissions which we have passed. The powers of the President are inherent with that Clause - of subjecting it to the Provisions of the Constitution.

**MR. MALIRO:** Madam Chairman, I think if you remember well, under the Public Service Commission, you will find that there are certain cadres who are to be appointed by the Public Service Commission and there are other cadres who are to be appointed by the President with advice of the Public Service Commission. In the same way, when we subject this Health Service Commission to the Provisions of this Constitution, it will mean that certain officers like the Permanent Secretaries, Director of Medical Services will be appointed by the President with perhaps the advice of the Health Service Commission. But other lower cadres will be appointed by this Health Service Commission and it is in line with the Public Service Commission, it is in line with the Education Service Commission. I do not see anything new here, Madam Chairman.

**THE DEPUTY CHAIRMAN:** So, I think that is clear that (b) does not contradict what we are debating. Hon. Kanyeihamba, are you comfortable with the wording of (a)?

**MR. KANYEIHAMBA:** Madam Chairman, I think that it was clumsily put but I think it is intended to say that they would advise the President in performing his or her functions under this Constitution. Madam Chairman, I had read from (a) to (c) so that people had clarifications on the various others. I assume that when they do not have clarification, you could put the question on the Clause.

Madam Chairman, in (2) it is recommended that: "*in the exercise of its functions, the Health Service*

*Commission shall be independent and shall not be subject to the direction or control of any person or authority except that it shall take into account Government policy relating to health.*" Just the same formulation that we have done for other Commissions.

In (3) it is recommended that: "*the Health Service Commission may by writing delegate any of its functions to a District Service Commission or any other authority or officer*".

(4) - *The Health Service Commission shall make a report to Parliament in respect of each year on the performance of its functions.*

**THE DEPUTY CHAIRMAN:** All are agreed to!

**MR. KANYEIHAMBA:** (5) - "*Subject to the Provisions of this Article, Parliament shall make provisions to regulate the functions of the Health Service Commission and to subscribe the composition of Health Service.*"

**THE DEPUTY CHAIRMAN:** I now put the Question on 197 that a word 'shall' be inserted and subject to putting it into proper language that it does stand part of the Draft Constitution.

*(Question put and agreed to)*

**AN HON. DELEGATE:** Madam Chairperson, I wanted to ask a procedural question on consistence. In the first Article, Hon. Kiyonga convinced us to remove one provision which was referring to substantial experience in health service management bearing in mind that both the Health Service and Teaching Service are technical commissions and that is why they were separated from Public Service. We did pass, in the Education Service Commission the same Provision which was saying that a person is not qualified to be a Member of the Education Service Commission unless he or she is of high moral character even integrity and has substantial experience in teaching. The Reconsideration Stage shall we be allowed to revive this to make them consistent so that either we remove this or we add the other one.

**PROF. KANYEIHAMBA:** Madam Chairman, I think it is very important that we are consistent in this Constitution. I do not know what arguments were put before the Committee before they were making arguments for including the experience in the Teaching Service. Nevertheless, here we have

been convinced this being the latest position we have considered that we do not need to put this and that there in order to widen the field of experience of people who may bring contribution to the Health Service. Having done so, I think it will be consistent before reconsideration, for the Legal and Drafting Committee to look at all these Commissions and make a recommendation on any anomalies or inconsistencies and then bring them before the Assembly for making them consistent. We cannot now review the provisions which were made on the Teaching Service Commission, it has already been approved by this August House during consideration. But we can only note that because of what we have done today there would some inconsistency and be ironed out during the reconsideration.

**THE DEPUTY CHAIRMAN:** I think the people concerned actually gave some reasons that you have in the Health Service.

**MR. MALIRO:** I thought that all along by creating the two special Commissions we had in mind that there were some sort of specialisation in this Commission. The reason for creating them I do not think it was because the Public Service Commission was overloaded with work. But the reasons which were given during the time we were requesting for this Commission to be created were that there are certain specialisation in these functions - services such that ordinarily, people may not see specific inclinations which must be put in consideration when considering either the terms of service or the type of people to be appointed and where. For that purpose, there was need to get some people with experience in Health Services and if I remember, we were talking of people working maybe 24 hours; people working on Public Holidays and so on. We wanted a person who knows those things to be the person who is involved with appointment. Now if you say that we pick any person; an agriculturalist, I do not see the difference we are making between that one and the Public Service.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, we made this decision and you kept and now you are through and you are reconsidering!

**MR. KANYEIHAMBA:** Madam Chairman, really I think that Hon. Kiyonga's Amendment was very sound and those of us who supported it were aware of what we were doing. Having said that, Madam Chairman, I want to assure the member

who has just left the Floor that this does not bar experienced persons.

**DR. KABERUKA:** Madam Chairman, it will be recalled that when this Assembly debated Chapter 13 on Local Government, it referred the entire Article 217 and parts of Article 218 especially, Clauses 4, 7, to the Committee chaired by myself with *-(Interruption)-*

**MR. WAGIDOSO MADIBO:** Madam Chairman, I wanted to draw to your attention that as of now, we do not constitute a quorum and are not competent to deliberate business within the provisions of our Laws. We are less than 90 far below the required number.

**THE DEPUTY CHAIRMAN:** Okay, I will accept your intervention because this time you did not say that it is what you have wanted. I agree the issue has been raised so Hon. Kaberuka, we shall start with your paper tomorrow. So we adjourn until tomorrow 9.00 a.m.

*(The Assembly rose and adjourned until Friday 19th at 9.00 a.m.)*