



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

TUESDAY, 20TH SEPTEMBER 1994

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 2244]

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

P R A Y E R S

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

The Assembly was called to order

REPORTS FROM COMMITTEES

PROF KANYEIHAMBA: I thank, you Madam Chairperson. I trust that the report of the Legal and Drafting Committee has been circulated. So, it is the one I am going to make remarks about.

Madam Chairperson, there is more to be said about the Report of the Legal and Drafting Committee than what has been prepared by the Technical Committee and circulated. It would be recalled that during the general Debate, many Delegates expressed disquiet and concern about the manner in which Chapter 3 of the Draft Constitution had been drafted and recast. Some of its contents could be identified as genuine national objectives and directive principles of state policy. Others could not be so classified. Many of the Clauses reflected what were already incorporated elsewhere in the Draft Constitution and which were justifiable while a number of the provisions dealt with contemporary policy which could conveniently be left with the Government of today, whatever its ideological or political commitment. This should have been left for that Government to determine. In other words many Delegates expressed the view that the Constitution should not be affected by the actions of contemporary society of posterity.

Following this concern, several hon. Delegates requested the Chairman of the Legal and Drafting Committee to prepare a study on this particular Chapter as a guide to the C.A.

It may be remembered Madam Chairman, that I circulated what I considered to be the problems with Chapter 3 as presently structured in the Draft Constitution. The analytical study and proposals I submitted formed part of the Documents which guided both the Technical Committee and the Research Team which eventually did the work on this Chapter. The Legal and Drafting Committee also took advantage of the availability of literature and

constitutions of other countries which deal with or provide for principles and objectives of state policy. It is worth stating here that these other constitutions are a mixture of short and crisp statements of half a dozen principles of state policy to dozens and dozens of principles and objectives varying in wording and length. I will return to this matter shortly Madam Chairperson.

This is to say that previously Chapter 3 had statements of National Objectives and directive principles of state policy amounting to more or-less 122 Clauses and sub-clauses. This, the Legal and Drafting Committee has reduced to a mere 23 Clauses of objectives and principles of state policy. I believe this is no mean achievement, Madam Chairman. The Clauses which are recommended for retention contained in Appendix 2 of the Report which has been circulated. They are numbered from Clauses 7 to Clause 31. Madam Chairman, it is suggested that this should be the Articles or Clauses to be debated by this august House by a view either to confirming them as objectives and principles of state or for adding on or indeed subtracting from them.

Permit me to make a few remarks from the objectives and principles of state policy which the Committee recommends should be retained under that name.

The Committee believes that whether these principles and objectives remain in the present Chapter as presently described, or whether they should be removed and incorporated in a schedule or indeed as some of us prefer, should follow the Swedish example and be enumerated at the beginning of Chapter one. This is a matter yet to be discussed by this august House. The Committee recommends that we should proceed and consider the principles and objectives as recommended by the Committee in Appendix 2; consider them in our usual manner of whether they should become part of the Constitution and after we have completed that, at least be satisfied that we all are in agreement as to what objectives and principles should be retained in the Constitution. Then only after then should we consider where in the Constitution they should be placed - whether it should be at the beginning of Chapter I or it should be in the preamble as somebody had suggested, or indeed whether they should remain where they are as a separate and distinct Chapter, or whether they should be part of the schedules. That matter should

wait until we have debated and approved them. The only one thing the Committee recommends is that these principles and objectives which are retained are too numerous and bulky to be included in the preamble of the Constitution. But we do not make judgement on where else they should go although as individuals we have our own personal preferences. Madam Chairman, we are therefore proposing that if the recommendations of the Committee are accepted, the Assembly should later have a short debate to resolve where these principles and objectives should be incorporated as I have tried to explain.

Although there was no unanimity on the issue, many Members of the Committee believe that to state in any part of the Constitution that some of its provisions are non-justiciable as present Chapter does, does not auger well for their validity or indeed respect. Thus, for some of us who prefer the wording which is reproduced in our Report Appendix 2, Clause 7 (i). Madam Chairperson, if I could direct hon. Members to that wording, it simply says, that the objectives and principles in this Chapter shall guide Parliament, the executive and the judiciary, the National Councils, and all organs of state. All citizens, organisations and other bodies and persons in applying or interpreting this Constitution or any other Law and in taking and implementing any policy decisions for the establishment and promotion of a just free and democratic society.

As I said, there is no unanimity in the Committee, nevertheless many Members preferred to leave out the words which indicate that these objectives and principles are non-justiciable because of the reasons I have stated. That this would tend to undermine these provisions and indeed make people not to respect them very much.

However, there is also a practical consideration, Madam Chairperson. In these objectives we have included one which says that in appointment and forming corporations and commissions, the Government shall bear in mind the geographical composition and character of Uganda. Let us see that objective in this principles. Now, let us imagine that a Government which is otherwise popular and which is doing all other things is blind to this particular guide-line and proceeds to elect or appoint and concentrate on public servants who come from one tribe or even one clan. Supposing this happened. And then we challenge them politically, and they say

'my goodness! this provision is contained in the non-justiciable clause and therefore you cannot take us to court, you cannot do anything about it.' We believe that this would completely undermine the constitution and efficacy of these provisions. Therefore, that is why we think that however worded they may be, we should leave out the statement that they are non-justiciable.

Do we have the President for this proposal? Very much so. Many of the Constitutions that we have studied, some of them do have this Clause. But others do omit it. For example Sweden. The Swedish Constitution contains principles and objectives which are listed at the beginning of the Constitution and it does not declare that these are non-justiciable. So, I think that many members of the Committee preferred that kind of wording.

I want to say that on this part of the Report, some of the Clauses, that is on Appendix 2, which contains the principles and Objectives we are recommending should be retained, some of the clauses and sub-clauses have been re-drafted to give them the appearance and content of principles and objectives as opposed to the position where they had an appearance of positive Law.

Now, coming to Appendix 1, in our Report, this is a detailed account of the fate of every clause and sub-clause which were originally contained in the draft Chapter. On the basis of the principles which guided the Committee and which I have enumerated and described, clauses and sub-clauses were either retained, transferred or deleted from wherever they were. Deletion of any Clauses was necessary either because the provision was covered elsewhere by some justiciable and positive clause or sub-clause of Law or it was considered by the Committee to be superfluous or misplaced. In coming to its decisions contained in Appendix 1, the Committee discussed at length, the merits and demerits and the constitutional propriety of retention, transfer or deletion. In this task, the Members of the Committee were assisted by the Research Team which had carried out the comparative study of all the Constitutions of the World. The technical Committee also had carried out its own research and the Committee Members with their own knowledge of Constitutions and the Law, had prolonged discussions on this matter. The Committee, therefore, recommends that it would be in order for this august Constituent Assembly to receive and adopt this part of the Committee's

Report without really further or much debate because it is non-controversial and simply tells you the reasons in every Clause and Chapter, why the Committee felt it was necessary to retain or transfer or add. That is our recommendation that Appendix 1 be adopted without much debate.

Finally, Madam Chairperson, Appendix 3 of the Report contains provisions which the Committee recommends should be transferred to other Chapters or Clauses of the Draft Constitution. The Committee did not address itself to their merits or demerits. They simply said they should be transferred to those parts and when we reached those parts of the Draft Constitution, they will be debated there in their context and on merit.

I want to comment on the matter which was raised yesterday and where some Members of the Legal and Drafting Committee felt concern. There was a list of Lawyers circulated - some 49 Lawyers of C.A and some people seem to have suggested that this originated from the Legal and Drafting Committee. It did not. We had no knowledge of it and we do not know who circulated it. Nevertheless, personally, I think it is a good idea to know the statistical data of this Constituent Assembly, and I hope that whoever drafted it will come up with how many pure scientists we have in this House, will come up with how many teachers we have and others, so that history knows the composition of the C.A and the Distinguished Delegates where they came from, what their qualifications were. But that is a personal choice and I am hoping that whoever had the time to list the Lawyers will be able to list for us scientists, Professors, Engineers and Priests. Madam Chairperson, with that humorous comment at the last end, I beg to report. I thank you.

THE DEPUTY CHAIRMAN: Thank you very much, hon. Kanyeihamba. I want to thank the Legal and Drafting Committee for the time they took to prepare this Report and hon. Kanyeihamba for having given it to us. Now, the position is: we have received this Report and hon. Kanyeihamba proposed a procedure that we note and adopt the Report, and that Appendix I should be really adopted with very little comment. That we too, debate Appendix 2, whether those Articles stand part of the Constitution as they have suggested. They also said that Appendix 3 should be debated at the appropriate time when we are discussing the areas where they have suggested that these Articles should be trans-

ferred; and that the location of the Chapter should be decided later after the Chapter has been approved or considered as part of the Draft Constitution. That we leave out the statement that the national objectives are non-justiciable, and actually he justified his proposal.

MR. BABU: Thank you very much, Madam Chairman. I am very grateful to the Drafting Committee, but I am just seeking clarification. When transferring some of these Articles in other areas of this Constitution, what happens to the Articles to be transferred in the areas where we have already passed the Chapters? Because this is where I think we might have a problem. I will ask the Chairman to help us. If we go on and transfer a particular area to Chapters we have already passed or Clauses, then what is going to happen? Point number two - I want to find out whether as you have said rightly, we will be coming back again to Chapter 3. Because if you ask me to accept Chapter 3 as it is now without having enough time to look at it to stand part of this Constitution, that will be rather unacceptable. I would rather that we adopted the recommendation but we must have a time when we can come back to it because there might be a few things that we might have to look at. So, before we adopt it as part of this Draft or stand as part of the Constitution, I would rather it is accepted as a very good proposal. We also look at it; we are given time and then we can come back to it. Those are the two areas that I would like the Chairman of the Legal and Drafting Committee to help us.

Lastly, Madam Chairperson, If the secretariat could be kind enough to reproduce the Chapters as we have passed them so that we can know exactly what we have done. We have really scribbled in some of our Draft Constitution. They might not be that accurate. So, if we could have copies - something on the lines of what we have done here so that we know we have passed this Chapter, this is exactly what is contained in it and if somebody finds there is an error, then we can correct it. Thank you very much, Madam Chairperson.

PROF. KANYEIHAMBA: Thank you, Madam Chairperson and I think that the points raised by hon. Babu are very pertinent. Let me start with where we see that this particular provision or clause should be transferred to a particular Clause is justifiable. We mean that either that particular Clause should go intact to that particular section or Chapter as we did

with Clause 8. You will recall that we that we had already considered Clause I and passed it, then later on the Legal and Drafting Committee considered the wisdom of transferring the Clauses 8 to the same Chapter. We did precisely that - we recommended and the House voted on that. This is what many of these transfers mean.

The second one where we said, delete, it is because that particular Clause is already adequately covered by the provisions of the Draft Constitution already. Many of these examples relate to Chapter 5 on Human Rights. There were many things which were duplicated in this Chapter which were already adequately covered by the provisions in the Draft Constitution and when we say, delete, we mean that it is already adequately covered and therefore, we do not need to go and visit that Chapter any further.

Where we are saying transfer, in some of those Chapters, once you have accepted this, we shall point out where further action is required. But most of this we have debated and accepted, therefore, there is no more action to be done. But where we are proposing a new transfer of the Clause which has not been debated by this august House, then opportunity of course will arise when time comes for that one to be debated afresh. Many of the Clauses which we transferred relate to Chapters that we have already covered. Many of these relate to Chapters which we are yet to consider. I want to emphasize that in relation to objectives and directives we have recommended should be retained. We are recommending to the House to debate them in full, Clause by Clause, and either approve them or not. If they feel that one of the Clauses we say should be deleted, is a good one to be retained, they can make that a proposal. So, obviously hon. Babu is right in saying that they should take time to study our Report. But what we have done is to refer to every Clause and sub-Clause so that there is no doubt in a Delegate's mind as to what we are proposing should be done to that Clause. I thank you, Madam Chairperson.

PROF. NABUDERE: Madam Chairman, I do not know how we should proceed. I am trying to find out whether in fact we ought not to reflect on what we said during the general debate. There were some of us who actually objected to this Chapter being in the Constitution. There were those who thought it was a good idea but that it should go somewhere, either in the preamble or at the end of the Constitution, some even suggested that it should be a separate

booklet endorsed by the Assembly as a guideline. The Committee has done a very good work in the sense that it has sorted out a lot of Chapters and made different recommendations on each of them. But still there is a problem whether we should not still discuss the concept itself - the concept of state directive or policies of state direction. I think that we should still discuss that before going to the details of the Report of the Legal and Drafting Committee but just to dispose of that question whether in fact we need this as a concept to be completed into our Constitution. Once we agree that it should be incorporated then we can go to the details of those various parts of recommendations made by the Legal Committee. Madam Chairman, I beg to suggest that procedure. Thank you.

DR. KIYONGA: Madam Chairperson, I would like to thank the Legal and Drafting Committee for a job well done. As Prof. Nabudere has just stated, at the time we referred this work to the Committee, there were a number of feelings. Some people felt the Chapter should be retained while others said it needed editing to ensure that repetition in the Draft Constitution is avoided or reduced. Besides that, Madam Chairman, some of us when we went to the Legal and Drafting Committee to move certain Amendments, we were advised that this would best come under what will be left of Chapter 3. I therefore, also support the proposal that we need some time to be able to consider carefully what the Committee has brought for us. Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: Before we proceed, I would like to recognise the presence of *Owekitibwa Katikiro* of Buganda, Mr. Joseph Ssemogerere who has joined in this Debate.

MR. KAYONDE: Thank you, Madam Chairperson. I also want to thank the Legal and Drafting Committee for this elaborate work they have done. But Members should note that we have just received this Report and many of us have not internalised the contents of the Report. I think we shall not be in position now to discuss the contents of the Report; we need more time. But I wanted also to propose that since the Report is affecting almost the entire Draft Constitution, they have referred to certain Articles in various Chapters and I think it would be appropriate that this Report and various Amendments should be discussed in the various Committees which we have set up, because for example, the contents of this Chapter can be discussed by Committee 4. But then

the various Articles which have been referred to other areas or other Chapters can also be covered in the various Committees. So, I wanted to propose that rather than discussing this in the plenary, the various Committees should discuss the contents of this Report in their various Committees. I thought this would give us a balanced position on whatever they have recommended. I thank you.

MR. WANENDEYA: Madam Chairperson, I must say in the first instance again like my Friends, to thank the Legal and Drafting Committee. Madam Chairperson, I would also like to concur with hon. Nabudere from Budadiri West, in saying that we should discuss the matter of whether or not, Chapter 3 should be included at the beginning in the preamble or at the back. This should give us a good opportunity to clear this out of our way and then finally, I would propose that we do that now, and then we break today in order to internalise the Committee's Report in detail and discuss it tomorrow because without internalising the Committee's Report and recommendations, Madam Chairperson, the Budadiri may not like what could be in the Report without internalising it and giving our opinions. I thank you, Madam Chairperson.

MR. MULINDWA BIRIMUMASO: Madam Chairperson, the issue of discussing where this Chapter should be or whether it should be there, I think it is not the important thing to do now as hon. Wanendeya would like us to believe. I would think that we go straight to the Report, see what they have suggested to delete; if it is okay, I do not think we need a lot of time to internalise. We have been looking at this Chapter for a long time and we should not waste time. I do not think hon. Wanendeya this is going to be your first time to look at the Clauses of the original Draft. So, we go with the recommendation of the Report, we either agree with the Draft proposal or change. But we do not think we need a lot of time to make us wait until tomorrow. I beg that we move accordingly.

DR. OKULO-EPAK: Madam Chairperson, I would like to thank Legal and Drafting Committee for the commendable job. During the general debate it was my view and it is still my view that the spirit and the issues raised in Chapter 3 are very good. But it is my view, Madam Chairperson, that they need not be accorded a separate Chapter. It is my view, Madam Chairperson, as it is even recognised and recommended by the Legal and Drafting Committee,

that a number of issues there can now be dismantled and incorporated in various Chapters on various subjects. It is also still my view and I do agree with the Legal and Drafting Committee that those sections or provisions which they intend to retain or recommend to be retained should rather be looked at very closely and summarised and incorporated as part of the preamble. Indeed Madam Chairperson, I have already done so; I attempted to look at some of the principles in this Chapter and incorporate them in a formulation of a preamble. If we agree on this approach, Madam Chairperson, I believe we can easily, this morning dispose of the matter of Chapter 3 in this manner.

(a) That those provisions which the Committee recommends should be incorporated in various Chapters would be accepted and transferred to the various Committees to look at them and see how they can deal with them in their various Committees.

(b) That those principles which they recommend to be retained and which I have already referred to, be sent and looked at in the reformulation of the preamble. If we approach this matter like this, Madam Chairperson, I think we would have a very easy task to dispose of Chapter 3. I think the fate of Chapter 3 is obvious that it can be dismantled and then be incorporated either in the preamble and in the various subject Chapters. I thank you Madam Chairperson.

MRS. MUKWAYA JANAT: Madam Chairperson, having listened to the hon. Delegates contributing, it appears to me that there is already a Motion on the Floor by hon. Nabudere; that the House is divided - whether the Chapter should remain as part of the Constitution or not. So, why do we not dispose off that in the usual manner we have been carrying out our business? If it is decided that the chapter should remain in the Constitution, then we adopt the Report and discuss. Thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: I recall when we were discussing the Chapter we disposed off on the National Council of State, the Chairman said it categorically that in this Constitution we do not consider Chapters but we consider Articles. Which means we will have to go all the same Article by Article until we dispose of all of them. Fortunately yesterday, the first Article pre-empted all the other Articles which is not the case for this one and it is from that area perhaps I could call upon hon. Kanyeihamba to explain.

PROF. KANYEIHAMBA: I thank you Madam Chairperson and I entirely concur with your observation that we discuss Clauses rather than Chapters and indeed this is a ruling which has already been expressed by the Chairman himself.

Madam Chairperson, our strong recommendation was that we should consider these Clauses which are under this Chapter one by one and debate them, the ones that the committees has recommended should be retained, we may add on more depending on Members' wishes, or indeed subtract some of them. And that after we have approved them, then the issue of where they should be, should be decided afterwards; and indeed Madam Chairperson, I want to reveal the information that the Chairman himself - I saw him before I came here - said he would wish also to be present when we decide where we should put these Clauses because he has got a wealth of experience in these matters and he would like the Assembly to take the advantage of this experience by giving us some evidence of it. So, Madam Chairperson, I would recommend as the Committee has, that we discuss the principles as to be retained in the Appendix 2 and either approve them or reject them; then after we have done that, then it will be proper for us to decide in what part of the Constitution, if at all, they should be placed. I thank you Madam Chairperson.

MR BABU: Madam Chairperson, thank you very much. Now, my problem is that there are a group of people who would like the whole Chapter to be deleted or to be moved to other areas. Now, there is a group which wants the Chapter to be retained as proposed by the Legal and Drafting Committee. I agree that we do not discuss, we discuss Articles but there is that feeling and people have expressed that feeling in this Assembly. I would therefore, request, Madam Chairperson, that we discuss these principles generally; whether it is acceptable or not and from there, I would like to agree with hon. Mrs. Mukwaya, that from that point we can adopt the Report and go ahead to discuss Article by Article. Otherwise, Madam Chairperson, those who feel that this Article should be moved maybe in a schedule or preamble or whatever proposal they might have. So, I would like to request that that become the Motion and if possible they move it and then we vote on it and we move. Otherwise, we are going to stay here only discussing this issue. Thank you very much.

THE DEPUTY CHAIRMAN: I note your sup-

port. But we also look at it from the other side of the coin that if you are saying that this is going to be transferred to the preamble, you have to agree on the content. What are you transferring? So, why do we not agree with Legal and Drafting Committee; look at the content before you decide to throw away or not?

MR. KABUGO: Thank you very much, Madam Chairperson. During the course of my general Debate, I was one of those who came out with a proposal that Chapter 3 should be deleted because looking through the various Clauses, it seems as if we were endorsing the present Government's policy which might change with the change of other Governments. If you look at the various Clauses, you find that these are contents of manifesto which is produced during the general election in order to attract electorate to give a specific party more votes in order to win the general election. In this case, Madam Chairperson, I propose that we go along with the recommendation of the Legal and Drafting Committee and forget all about the contents which are presented in the Draft Constitution. Thank you very much.

THE DEPUTY CHAIRMAN: I think that was contradictory. You are contradicting yourself by saying that we go by the proposal of the Drafting Committee in which case we discuss Appendix 2. So, you are saying that we discuss appendix 2, not the contents which are remaining, see where we can transfer later and then we would know what we are transferring.

MR. KITARIKO: Thank you, Madam Chairperson. I believe we have read this Chapter thoroughly before and during the Constituent Assembly and we are aware of its content. Since there is some divergency at whether it should be included in the Draft Constitution or not. Let us therefore, discuss a principle in general. Should we have a Chapter 3 in our Draft Constitution? Once we dispose of that one, those who say it should be included then we can discuss the business of that Chapter. Because otherwise, really we are going to waste too much of our time. Thank you Madam Chairperson.

MRS. MWESIGYE RUHINDI: Thank you, Madam Chairperson. Madam Chairperson, I think we need to to be consistent in our procedure. We have been debating Article by Article since we started and that was at the request of the Members.

If some people feel that they do not want a particular Chapter and want it to be thrown out, I believe that even when we follow that format of Article by Article, when we are considering what a person does not agree with, he or she will request that Article and in so doing, and they are the majority, then we shall end up deleting the Chapter. We note that we have already passed some Articles in other chapters that we have passed which we drew from Chapter 3. So, to me it will be really a conflict in the sense that they are now seeking throughout the Chapter - a Chapter some of whose Articles we have already passed and put in other places. I believe Madam Chairperson, that this Chapter is very fundamental. In fact it is the most important Chapter in this Draft Constitution in as far as it sets out the vision of Uganda, the mission, it gives us direction - how is Uganda going to judge herself, her performance in future without this Chapter? It is my strong contention therefore, that we must retain this Chapter. Let us debate it Article by Article as the Committee has recommended and those ones not in favour of some particular Articles will oppose when chance comes. Thank you very much.

MRS. LAGADA AMONGI BEATRICE: Thank you Madam Chairperson. Madam Chairperson, it seems to me that we have two problems - one, the people who think we should first debate this Chapter 3 as a general principle so that we can decide whether we want it to be retained or thrown out and then secondly, we have the work done by the Legal and Drafting Committee which to me is a very good job well done, which should help us to then look at this Chapter Article by Article. In fact I note that they have tackled it in chronological manner starting with Article 7 and going through. It should help us to go through one by one and decide whether we agree with their decision to retain, to transfer or to delete and then we shall eventually come to the end of the document. But Madam Chairperson, what I want to say here is that to me Chapter 3 is neither a political document nor whatever of the present Government or something. To me Chapter 3 is the wishes of the people of this country. People who wanted certain aspirations which they would like to see various Governments who come to rule them follow. It is a sort of direction for whatever Government which will later come to follow. There are certain things the people of Uganda would like to achieve. So, Madam Chairperson, if the House feels strongly that we should first agree on whether to keep it or dispose it off totally, then we better go ahead and tackle it. Otherwise we shall go round in circles and we shall never come to a conclusion. Thank you.

MR. KABERUKA WILLIAM: Thank you, Madam Chairperson. It seems we are in a dilemma because from the very beginning when we were at consideration stage, it was clear that the House was divided as to whether this Chapter should be included or not. Those views are still with us today. However, our rules do not seem to allow us to debate or to discuss the principles of the Draft Constitution rather than Articles. I can also note that if we go on to discuss Articles, we are assuming that every one of us agrees that this Chapter should be in the Constitution. So, Madam Chairperson, I request that maybe we should stay or amend our rules of procedure namely, Rule 48 (3), and first discuss or dispose of this question which we did not deal with before we came to consideration stage. Because going ahead and discuss Article by Article while we know Madam Chairperson, that actually what is contained in this Chapter the headings are catered for elsewhere. So, either we decide that we discuss under the sections where they appear and forget Chapter 3, or we go back to discuss the principles. Thank you, Madam Chairperson.

MR. BIRIMUMASO: Madam Chairperson, since there is a view of deleting the Chapter and we cannot discuss the whole Chapter, I am proposing that those who want to delete the whole chapter should start by deleting the title. So, I advise those who want to delete first to move the Motion and delete the title. If they carry the Motion automatically the Chapter would have gone. If they do not, then we move on to the Articles.

THE DEPUTY CHAIRMAN: I think really we have to follow the rules.

MR. OMARA-ATUBO: Madam Chairperson, I am going to restrict my remarks to the procedure which I think we should adopt and not to the merits of Chapter 3. Madam Chairperson, there were those who in the general debate stage felt that the whole Chapter 3 should not be there or should be catered for in another way. There are those who feel that Chapter 3 should be there either in the present form or in other forms. So, Madam Chairperson, I think as is matter of procedure we should dispose of this issue first, whether Chapter 3 should be in the Constitution. Once you dispose of that question then the next question if we agree that Chapter 3 should be there, then we shall go to the merits and contents of what should actually be in Chapter 3. So, I would beseech and pray to my Colleagues that really the

issue here if we are to follow the procedure like in Rule 48 (11), if we can say that the opinion of those who want it to be deleted completely is the one which departs furthest as an Amendment, then we should dispose of that. Those who want Chapter 3 to be should really have the opportunity of now going into the depth of saying, we want this and that or we do not want this and that. So, Madam Chairperson, my honest view is that if we could dispose of and satisfy those who want or do not want it, is the basic issue of procedure Madam Chairperson.

THE DEPUTY CHAIRMAN: With due respect, your proposal which I think is in line with what the others have said, I still reiterate that we have a technical problem which we can have the solution to. You are talking of sub-Rule 11 of 48. It does not talk about the opinion departing furthest from the text for the whole Chapter; it is for the whole Article. So, perhaps how we can go about this, is to look at Article 43 (a) then we go to 48 (3) which will allow us to debate the general principle rather than Article by Article.

MR: BIDANDI SSALI: Madam Chairman, I beg to move that the report of the legal and drafting committee be adopted. *(Applause)*

THE DEPUTY CHAIRMAN: That Motion I take note of but there is so much going on and the problem was that not much could be done. So now there is a proposal that we adopt the report of the legal and drafting committee. Is it seconded? I now put the question that we adopt the report of the Legal and drafting committee.

(Question put and agreed to.)

THE DEPUTY CHAIRMAN: The report has been adopted and we can go ahead and if we adopt the report, that means when we go to appendix 1, they are proposing those which are going to remain and those which are not going to remain, and I propose now we go to appendix 11.

MISS NAKYANZI: Thank you, Madam Chairperson. After adopting the report of the legal and drafting committee, what I would suggest is that we take that appendix 1 are the amendments proposed to chapter 3, and they be officially moved; for example, may be I would ask the chairman of the legal and drafting committee to move that article 7 should be retained and then we debate on that one, we reach a

decision whether we agree or not then proceed to article 8 to be deleted and we debate that one then we proceed like that. Instead of taking it we adopt appendix 11. Thank you Madam chairperson.

THE DEPUTY CHAIRMAN: That is one way of looking at it, but let me amplify on the issue so that we know where we are going. I am saying that you can also look at appendix 11 and as we go along we shall be noting what has been rejected.

MR. DICK NYAI: Thank you, Madam Chairperson. My understanding of the English language is that once we adopt a committee report, the report becomes ours. We have internalised it and Madam chairperson there is nothing to discuss. We would take appendix 11 as a new chapter 3. Appendix 3 will be moved and contained wherever they should be. That is what the legal and drafting committee has said. We adopted it. That is the end of the matter, Madam Chairperson. *(Applause)*

MR. KAVUMA: Thank you very much, Madam Chairperson. The way I perceived the decision we have taken by adopting the report is that, it is now the property of this Assembly.

THE DEPUTY CHAIRMAN: Yes.

MR. KAVUMA: After it has become the property of this Assembly, we are saying we have adopted it. Now we can discuss it and see whether we shall pass it. So, there is no question of saying because we have adopted it, there is no point in discussing it in details. Madam Chairperson, I have heard a number of delegates saying they wanted sometime to look at this report before they take a final decision

I think it is prudent matters like these. Once we have received a report, delegates should be allowed sometime to go through it, and then be able to) take decisions on it. *(Applause)* I beg to propose that we proceed that way.

THE DEPUTY CHAIRMAN: That is a proposal that people may need time. But we have been with this constitution for a very long time. I agree with your sentiments, but let us look also at it from the other side of the coin. Because what I had thought was that after receiving this document from the legal and drafting committee, before I come to adjournment; there two scenarios, the legal and drafting committee had requested that after receiving this

proposal we go on to discuss appendix 4; that is article by article they are proposing to remain. There was another view from hon. Nakyanzi that we start justifying why they have been transferred and whatever have you. Then a third view is that people have not read this document, they would like to internalize whatever is contained.

MRS: MUKWAYA JANAT: Point of procedure. In my view I thought Madam chairperson, that after hon. Bidandi Ssali had moved a Motion that we do adopt the report. What I would have considered to be the next step, is the adoption of this report. There are two principles: we have agreed that chapter 3 as reported by the committee remain part of the constitution. The other sections which have been transferred, we shall discuss them when we come to the relevant sections where they have been transferred. These which have been recommended to be deleted, we have nothing to do about them. The technical committee had legal assistance, it was discussed, so what I am requesting, Madam Chairperson, without wasting time let us go to those articles which have been recommended to stand part of the constitution, let us discuss them and decide whether they do stand part of the constitution or not.

THE DEPUTY CHAIRMAN: Okay, it is good now you have clarified because you had said that we pronounce ourselves on the chapter, we do that after. But I was also saying that, there was one view that people want to start with appendix 1. The proposal of the legal and drafting committee is that we start with appendix 11. That is we discuss the article 7. Now I propose that we go straight to article 7, that is appendix 11 and we discuss the contents of these articles.

MR. BABU : Thank you, Madam. Chairperson. It is a pity that my friends are feeling jealous because you have seen me. Now Madam chairperson, I called for procedure because I wanted to request very seriously, we seem to have misunderstood the report from the legal and drafting committee. I would like to propose that the chairman of the legal and drafting committee help us and guide us through this interpretation that we are putting to them. I would like to propose to you, Madam chairperson, that the chairman of the legal and drafting committee be requested to guide us and tell us exactly what their recommendations are of this report we have adopted. Thank you.

THE DEPUTY CHAIRMAN: The chairman of legal and drafting committee put it straight that they want us to note appendix 1, then go to appendix II and come to the content of the chapter. Now I do not see what other explanation he is going to make because things are very clear. They were either deleted because they already appear somewhere and whatever have you.

PROF. KANYEIHAMBA: I think you, Madam Chairperson. You are absolutely right in saying that our recommendation is that, it is the contents of appendix II which need to be debated by this august House - that is your recommendation. In the contents which are in appendix i, we are giving information how we dealt with chapter 3. We said we are retaining this, if we are retaining it then it will be in appendix ii. We say we are transferring this because it is more appropriately dealt with in say the Clause on local government, then we are proposing that that is where it will be discussed when we come to discuss local government at some future date. We are proposing that this should be deleted because it is already covered by section so and so of the draft constitution, and therefore, we need not have it here. So we are saying that the provisions and recommendations in appendix i are a guideline to this august House and they should be considered as such.

What I sympathise with is that, really Members do need some time to read this report. It is a voluminous report and obviously they are anxious to know that something that ought to be covered has not been left out and vice versa. And, therefore when people plead for time, Madam Chairperson, I have sympathy with that. We could give Members time to discuss that, but you are absolutely right that the controversial issues in this report are those recommended Clauses to be retained, either as originally worded or as the committee has modified them, and you are right also, Madam Chairperson, that the proper procedure now that we adopted the report of the Committee is to consider those articles from article 7 to 31 which the Committee has recommended to be retained, and then you put the question and then each clause be debated one by one. There will be Members after they have read the report who will see a very vital point that has been left out. We think that the committee was wrong in saying Clause so and so should be deleted, we move that it should be restored or whatever. But as I say really our information in appendix I is non controversial, it simply tells you how we proceeded to dissect that chapter. I would

recommend, Madam Chairperson, that you consider giving some time to Members to digest and analyze the report but when we come back then we consider the contents of appendix II which in the substance of the principles and objectives we are suggesting should be retained. I thank you.

LT. COL. KIZZA BESIGYE: I have a difficulty in the procedure we are adopting because I believe the only way we can discuss appendix II is by discussing appendix I. Unless the legal and drafting committee is telling us that whatever they have recommended be deleted or transferred we take it without discussion.

If not, the only way we can discuss what is to be retained is by discussing each article they proposed to be deleted or transferred. And I do not find any difficulties in our doing so because they gave clear reasons why an article should be deleted or transferred. Therefore, I would like to support hon. Nakyanzi that if we discuss appendix I, we would have discussed appendix II. What will remain subsequently is to take a decision on how to treat the remnants of chapter 3 which from what I heard the chairman of the legal drafting committee say, even the committee did not take a decision on how to treat the remnants of chapter 3; whether to treat them as a pre-ambular provisions whether to treat them as substantive articles in the constitution. He may guide us at the appropriate time once we have the remnants on this question of justiciable and non justiciable. My understanding of what they propose to be remaining is that, all of them are justiciable, and if they are justiciable, and they indeed considered to be necessary to remain then obviously they ought to remain as substantive articles of the constitution and not to be transferred either as a preamble or a schedule. If they are not to remain substantive, then they would have been catered for by their deletion.

I would like to suggest that since we have read chapter 3 many times, we have to use on every article the committee has given us the report which is well investigated. If they think an article has already been covered by another article they say which article covers it, one can turn the pages and see which article has covered it. I believe we can right now start and consider this report article by article and move as quickly as possible to complete this chapter at the end of the day. I think what we made a mistake in doing is to say that we have adopted the report before discussing the report. Adoption can only come after

discussion, I think a question should have been put that the reports be adopted, which question should have been discussed by discussing the contents of the report, and then the report would be adopted with or without amendments. Now the way we have done it is that we have adopted the report without amendments and I do not think that is the intention of the House.

THE DEPUTY CHAIRMAN: No! no! we are receiving the report, otherwise before receiving the report you cannot discuss it. So you are misinterpreting the whole issue. We are saying, we are taking the property from the legal and drafting committee for ourselves, now we say yes we have it then after that we are debating it. Otherwise Members wanted to preempt the work of the legal and drafting committee, to throw away the chapter which is not allowed. We do not throw away the chapters, we throw away the article.

LT. COL. BESIGYE: Madam Chairperson, if that is the understanding we have in the House that we have not yet adopted the report, I think it is good for purposes of record -

THE DEPUTY CHAIRMAN: No! no! we have adopted the report but we have taken the report that we received it, now we are going to discuss.

LT. COL. KIZZA BESIGYE: Then after which we shall adopt? Without amendments?

THE DEPUTY CHAIRMAN: Excuse me hon. Besigye, we shall be pronouncing ourselves on the issues as we discuss them.

MR. MULENGA: Thank you, Madam Chairperson. I wish to add to what the Chairman of the legal and drafting committee tried to explain. With respect to a point made by hon. Kizza Besigye about whether we start with appendix i or ii or iii, and this is the position as I see it; we gave an assignment to the legal and drafting committee to look at this chapter in view of what had been said during the general debate, and made recommendations. It has made a recommendation that, chapter 3 or whatever its numbering should be in the text that is in an appendix I and II. The effect of this to my mind, is to substitute in the draft a different content, a summarised content. And therefore, when we are going to debate we should take it as if it was that appendix which is now in chapter 3. There is no need to debate

appendix I. One may refer to it for purposes of seeing whether the legal committee excluded anything or to transferred anything. But the interest of their report is to say this is what should be debated as chapter 3. Madam Chairperson, whether we adjourn now to enable people to internalize, or whether we immediately debate, it should be debating appendix II. I thank you.

THE DEPUTY CHAIRMAN: I think now the outstanding issue is only one, and that is whether Members feel we should continue and start on debating appendix II or Members are given time to internalize whatever they say they want to internalize.

MISS. BYANYIMA: Thank you, Madam chairperson. I too was disturbed by what we have just done to adopt a report before we have studied it. I think we need time. Because what we are being asked to look at in appendix II, is in fact excluding some very important parts which we have lifted out and taken to other parts of the constitution. This means that what is left and what we are now considering as national objectives in fact have important objectives already missing for example, the whole of the articles that deal with protection of the rights of women, aged, disabled, were lifted out. Are we going to discuss National objectives that do not include protection of these groups? I think we need time to go back and look at what the committee has tabled and see whether first of all we can have a common vision. I think that is very difficult but, if the House thinks we have one vision of Uganda - fine. Then we see what else you want to add in view of the fact that we had already tampered with the chapter and lifted out parts of it. I ask for time, Madam Chairperson

MR. KAJJIMU: Madam Chairperson, yesterday we talked about the time factor and this was a very serious issue. My experience is that, there is nothing small, you may think that something is small but then you may find that it will take us a lot time. Now I suggest that instead of discussing this straight, we assign it to one of committees because we have already said that we are going to divide ourselves into committees. There are five committees, for example, there is this committee three where they are only two issues; we can add it to that. So that everything comes back when it has gone through a committee. Madam, when you start discussing this, I wonder how much time it is going to take us. And it is better we are taking it to committee 3 and as the

hon. Members have said that we need time to go through it; by the time we come we discuss everything.

DR. KABAYO: Madam Chairperson, I believe we should proceed as *-(Interruption)-*

PROF. NSIBAMBI: Point of order. Is it in order for people to discuss what they have not scrutinized and internalized? We want your ruling on that and that should enable us actually to discuss and internalize so that we can have a proper discuss off issues.

THE DEPUTY CHAIRMAN: Hon Nsibambi, there was a different view that people actually have read this report, and therefore they are those actually who wanted too start work. So I really had to spread out and see what their different views are.

DR. KABAYO: Thank you very much, Madam Chairperson. As I was saying, I believe we should proceed as we have been doing in the past. I look at appendix I and I think it is a list of proposed amendments. The other appendices II and III, appendix II is assuming that we have taken consideration of these proposed amendments, and actually corrected them as done by the committee. I believe appendix I is the logical list to look at when considering this chapter, and we view it as a list of the proposed amendments, handle them as we have been doing article by article, Clause by Clause. And, therefore I am in support of the proposals by hon. Dr. Kizza Besigye and hon. Nakyanzi. We proceed by looking at appendix I, and handling it in the context of chapter 3 one after the other. Thank you very much.

THE DEPUTY CHAIRMAN: Before we come to that, hon. Kabayo, Members are saying that they want time. Others are saying they want to discuss now. Now let me put the question on those people who feel we should adjourn so that Members discuss the report but then you will have to remember that actually we have adopted this report. Members pronounced themselves with a very big aye that we adopt this report. So when we go out we assume that we are going to discuss contravening what we have already pronounced ourselves on. So you will be discussing from appendix II and internalize it if that is how you want to adjourn.

MR. SEMALA KIRUNDU KIMIZE: Madam, if you say we have adopted this report, it is as if the

legal and drafting committee is hijacking the arm of the Assembly because they cannot say you are going to discuss this, no you are not going to discuss this, this you are going to delete and we do not have any say. Some of us have amendments on some of these articles that we think are by laws but just saying, 'this should be retained, this should be thrown out,' I think it is improper. We should be given a chance to be told and for us to argue that no, this should not be deleted. But instead we are being stampeded into just accepting the report of the legal and drafting. So, I suggest that we be given a chance to go through appendix I article by article as suggested by the legal and drafting committee and then we give our views as to why we say some of this is acceptable and why some is not. Thank you very much.

MR. KATUREEBE: I believe Members should be reminded how this whole thing came about. People have read this chapter and in their contributions in the general debate, everybody had something to say about this chapter. Whether it should be retained or not retained, and it was the decision of this Assembly that we asked the legal and drafting committee to go and study this in greater detail and give you a report as to whether to retain it or not. The legal and drafting committee has given you a report which suggests among other things that this be retained in a simplified version. It is up to this Assembly now to reject or accept the recommendation of the legal and drafting committee. This has already been adopted, it is now your document, it is no longer a document of the legal and drafting committee, it is a document of this Assembly. You should now therefore proceed to discuss those recommendations. But if we if we say we want more time, obviously when people are saying this chapter should be dismantled or be retained, they had already read this chapter. So we are wasting time. Madam Chairperson, I would suggest that we proceed to discuss the recommendations that have come to this Assembly from the committee of this House.

MR. NJUBA: Thank you very much, Madam chairperson. What we have in fact done is not to adopt the report, but to receive the report for discussion. The Assembly is now asking, and I thought you are moving very well because you posed a question. He is asking, should we discuss now, or shall we have some time to internalize this report and then discuss it? I think that is where we should take a decision whether we adjourn now and study this report or we proceed, and I thought you had moved very well on that one. *(Applause)*

THE DEPUTY CHAIRMAN: Thank you very much hon. Njuba. I heard that one but then there was a point of order and whatever have you. So at least I wanted to get different views of all the people. I think let us decide now whether we proceed now or whether people are given time to go and look at these proposals. Now I put the question.

(Question put and agreed to.)

THE DEPUTY CHAIRMAN: Members are saying they want to go at the proposal as per the drafting committee hand in hand with the constitution to see whether they agree with the legal and drafting committee or not. Today is a half day so the we shall be coming back at 8.30 tomorrow. But as we go I think we have got this clarification from the Member of the legal and drafting committee that we should give room to delegates also to discuss appendix I. So we adjourn until tomorrow to enable Members internalize the report.

The Constituent Assembly rose and adjourned until Wednesday 21st September, 1994 at 8.30 a.m.)