



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

TUESDAY, 30TH AUGUST 1994

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 1767]

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Tuesday 30th August 1994.

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

PRAYERS

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

The Assembly was called to order

CONSIDERATION STAGE OF THE DRAFT CONSTITUTION OF THE REPUBLIC OF UGANDA

Chapter 1 article 3: Defence of the constitution

THE CHAIRMAN: Hon. delegates I am advised that this constituent Assembly, yesterday, did conclusively transact Chapter 1 Article 3 and that we are now to start on Article 4. According to the report of the Legal and Drafting Committees there is a proposed amendment by Hon. Dr. Nyeko and Hon. Adoko Nekyon. Could Hon. Dr. Nyeko please move the amendment so that it is discussed?

MR. NYEKO: Mr. Chairman, I propose to move an amendment on Article 3 (4). We propose to delete 4 (a) and (b) and replace this clause. It should read, *'all citizens of Uganda are obliged to adhere to this constitution and have the right and duty at all times to defend this constitution'*. This would replace (a) and (b) together. I will probably give further reasons if I am allowed to proceed. When we look at what is on the draft, it is already prescribing the use of force or resistance in protecting this constitution. We are not in favour of this word *resist*, and we also see in 4 (b) that, *the people will do all in their power to restore this constitution*. This *doing all in their power* is also very vague and broad. And at this early stage of the constitution we thought, we should not start putting fear into the minds of people. We should not start using very strong words like *resisting*. We should give them assurance that this constitution is going to be promulgated with the consent and freedom of all the delegates and is going to be acceptable to all the people, and it should be their obligation to defend the constitution. We should not start prescribing force in defending this constitution. So that is why we are in favour of passing this amendment if Hon. Delegates could agree with us.

Unfortunately Hon. Nekyon is not around, but with these few words Hon. delegates, I beg the House to give a considered opinion on our Motion. Thank

THE CHAIRMAN: I take it that the Motion was moved by Hon. Dr. Nyeko and seconded by Hon. Adoko Nekyon, is that correct?

DELEGATES: Yes.

THE CHAIRMAN: He does not have to be here if he seconded it at the right time. So, now let me propose the question so that we debate it. The question is that Article 3, Clause 4 be amended by deleting the entire Clause and substituting therefore the following words: *'All citizens of Uganda are obliged to adhere to this Constitution and have the right and duty at all times to defend this constitution'*. For clarity of Members, the mover is proposing to replace the entire Clause with this new Clause which takes into account 4 (a) and 4 (b). Now the question is open for debate.

DR. KABAYO (Kassanda South): Thank you, Mr. Chairman. I seek clarification from the Mover of the Motion, in what way he proposes this amendment to take care of 4 (b) which provides for the restoration of the constitution. I do not think that is carried in the meaning of the amendment.

DR. NYEKO: To begin with, we believe that if citizens - as we indicated - if all citizens of Uganda are obliged to adhere to this constitution and have the right and duty at all times to defend it, we think Clause 4 of Chapter 1 could probably stop at that. We have article 39 *'Duties of the citizen'* and then also Article 47 which also gives prescriptions of what the citizen should do in defence of the constitution. We are of the opinion that in Chapter 1 we should not start scaring people as they read the constitution with words like *resist*. This is why we have moved this amendment, and our amendment tends to agree with the next amendment which will be moved by Hon. Elly Karuhanga seeking to delete articles 5, 6 and 7. This is again based on the fact that we are already prescribing too much use of force in defence of the constitution in Chapter 1 and this is a very bad impression to our work. That is why we hold that view. As in our earlier proposal, we said if we are to prescribe any specific measures of defending the constitution, we should put them in a separate chapter, may be the last chapter. We would want the citizens to read this constitution with minimum fear and we prescribe specific measures of defending the constitution at the end so that when we are sensitizing the people on how to defend the constitution, first of all we shall have sensitized them on the constitution itself using words which do not give them fear. We

should not use too much strong words. Then at the end we can now give them alternatives in event of somebody abrogating the constitution, e.g. you should do this, do that, etc. That is the view we have and we are in total agreement with the Motion which is going to be moved after this. Thank you, Mr. Chairman.

THE CHAIRMAN: You can't anticipate debate on the other one.

MR. KARUHANGA: Thank you, Mr. Chairman. Mr. Chairman, this amendment came to the legal committee, and in fact did receive a lot more discussion than many other amendments. Because we found that it was reducing Clause 4 of Article 3 and making it briefer. We then realized that in fact, it might be a good idea to adopt the proposal as moved by Hon. Dr. Nyeko and Hon. Nekyon who had a slightly different amendment but then agreed to adopt this wording which has now come up in the legal committee. We found that the important words that are required in (a) and (b) - the import of the meaning was going for the defence of the constitution in terms of *resisting*, that is in (a) and then after you have *resisted*, we found that in (b) your duty now is to restore what you have resisted and put it in place. Having realized that, we found that the short amendment proposed covers the two and makes the meaning decent. The breadth of the language used in the constitution can give it credence or can demean it. We then found that, if you read (4) as proposed, all citizens of Uganda are obliged to adhere to this constitution. So, the obligation for resisting is to adhere and then to have the right and duty at all times to defend this constitution. If you are defending it, then obviously the implication is what it stays.

We also found that the citizen of Uganda has obligations which are well detailed in the citizenship chapter in Article 47, this is on page 17 of our Draft Constitution. In Article 47, especially, Clause 2 of 47, it calls on the citizens of Uganda - of course it will be debated when we get there. I am not saying that, that it will be passed - it calls on the citizens of Uganda, if I may turn round and read it, that they should have a duty if they are able bodied to undergo military training to defend this constitution and to protect the territorial integrity of our country. So, we see that if we reduce this we adopt Hon. Nekyon and Hon. Dr. Nyeko's amendment which is brief, we will achieve our purpose. In any case, there is a time for us at some stage to define the duty of the citizen and his obligation. So, I support the amendment.

MR. KWERONDA RUHEMBA: Thank you very much, Mr. Chairman. I find the language in the proposed amendment a bit unpalatable. Dr. Nyeko is saying that all citizens are obliged as if they are not part and parcel of making this constitution. It seems as if somebody is standing on the periphery telling them that they are obliged to defend this constitution. Then there is a contradiction to this effect as you go down - that they have the right and duty at all times. The two are talking of two different things. One; that somebody is standing on the periphery and telling the people of Uganda that they are obliged as if they do not have the right then later on you tell them that they have the right to defend the constitution.

THE CHAIRMAN: I think you are misunderstanding the constitution.

MR. KWERONDA RUHEMBA: I have not misunderstood it, Mr. Chairman. If you read it in the context of what was suggested in Article 34, it does not carry the same meaning. And since it seems to be contradictory, Mr. Chairman, I stand to oppose the Motion.

MR. DICK NYAI: Point of clarification. Mr. Chairman, I would like to clarify the apparent misunderstanding by Hon. Kweronda as regards the wording of the amendment. I think when we say, all citizens of Uganda are obliged, it is the Ugandan constitution obliging all Ugandans. And it has got a third party standing like a prefect - like a head prefect with a big stick to club into obedience. Since we are making this constitution for the sake of Ugandans, I would like to go along with the amendment as proposed by Hon. Dr. Nyeko and seconded by Hon. Nekyon Adoko, that it makes quite a lot of sense, and I would propose that Hon. Members here adopt it. Thank you very much, Mr. Chairman.

MR. OKALEBO: Thank you, Mr. Chairman. I do support the amendment as proposed although I have slight difference in wording, but the principle behind the proposed amendment is quite clear and precise. Looking at the Draft Constitution as it is, you find that the provision of Article 3 sub article 4 Part (a), says that in the defence of the constitution, and in particular, to resist any person or group of persons seeking to subvert it. So, *seeking to subvert* here is vague. It may be difficult to establish and to maintain who is *seeking to subvert*. But the amendment as proposed is very clear and says, all citizens of Uganda are obliged to adhere to this constitution and

have a right and duty at all times to defend this constitution. So, the question of *'at all times'* is a permanent duty not necessarily waiting to see who is seeking to subvert. So, on those grounds, Mr. Chairman, and on the basis of the principle involved, I support the proposed amendment. Thank you.

PROF. KABWEGYERE: Thank you, Mr. Chairman. I have problems with this amendment. I think the import behind Chapter 1 is in two parts: the sovereignty of the people, and how they defend that constitution. Now, if the sovereignty of the people is disguised in some language and not brought out very fully, I think we will fall into the problem that many African countries have fallen into, of in way, subordinating the position of the people. The proposal is too summarised, to explicitly point out the role of the people in the whole process. If I may read the original as given in the draft, *'All citizens of Uganda shall have a right and duty at all times - (a) to defend this constitution, and in particular, to resist any person or group of persons seeking to subvert or overthrow the established constitutional order; and (b) to do all in their power to restore this constitution after it has been suspended, overthrown or abrogated contrary to its provisions'*. Now really that message as it is irrigated to the ear, contrasts with this, *'all citizens of Uganda are obliged to adhere to this constitution and have the right and duty at all times to defend this constitution'*. To me emphasis on shortness or brevity is really misplaced, as if we need to say something very clearly in not too many words but differentiated as it is, because I think really the objective is to have the people clear in what they can do in case of abuse of the constitution and indeed in case of abusing their sovereignty. So, to me differentiation as given in Article 4, is clearer and much better than it is in the amendment. So, I frankly oppose the amendment. *(Applause)*

MR. KITAKA GAWERA: Thank you, Mr. Chairman. Mr. Chairman, with due respect to Dr. Nyeko and Hon. Adoko Nekvon, who is my former class mate at King's College Buddo and while I share their sentiments and the steps they are taking to amend this Clause, I beg to differ in the sense that the amendment is too abridged, and does not quite convey the actual meaning as articulated in Article 3 sub article 4 (a), and (b) and as rightly pointed out by Prof. Kabwegyere I see no strong argument to tamper with the actual text in the Draft Constitution. I, therefore, oppose the amendment.

DR. MUSAANA SOPHY: Thank you very much, Mr. Chairman. I stand to differ from the proposer of the Motion for two reasons. The Motion as amended or proposed by the presenter the Hon. delegate, leaves out two issues in Clause 4 sub section (d) and that is asking the people, *'to do all there is in their power'*. That does not come out clearly in the proposed amendment. And also the idea of restoring the constitution after it has been abrogated, amended or overthrown, that idea does not also come out clearly in the amendment. So, for those two reasons I think the article as presented in the Draft Constitution brings out these two ideas more clearly than the amendment. So I stand to oppose.

DR. MUGYENYI: Mr. Chairman, I stand to oppose the Motion just because the message which is contained in Clause (4) is not clearly brought out by the amendment. In article 4 (a) of the draft constitution, the message is giving the responsibility to the citizens to defend the constitution, and if it has been abrogated by some other party to restore that constitution in 4 (b). But in the amendment, they are just talking about the citizens to adhere to the constitution. Suppose we are adhering to the constitution, and then somebody comes and abrogates it? The message in the amendment does not give us what we should do to restore this constitution! So, for this reason, Mr. Chairman, the message in the amendment is different from that of the draft and it should be thrown out. Thank you.

MR. MULENGA: Thank you Mr. Chairman. I also do not support the Motion or the amendment. First of all, I listened to Hon. Nyeko and Hon. Karuhanga trying to answer Hon. (Dr.) Kabayo. I failed to see the answers. Unlike the last two contributors, I feel that the amendment has dropped the idea of working for the restoration of the constitution after it has been overthrown. And I think it is important that, that right is recognized in the constitution. But once it has been overthrown, we still have the right and the duty to restore it. That is not taken care of by this amendment. Secondly, Mr. Chairman, I understood Hon. Nyeko to say that we should not use words in the constitution which will give the impression to the people that they can use force to defend the constitution or to restore it. But in my knowledge of the law this right to use reasonable force to defend one's rights is recognized. Even this is true in defending the constitution. If we have recognized in Clause 3 of Article 3 that some person

may use force of arms to remove the constitution. I think it would be meaningless to say, we can resist him or we can undo what he has done without force, by merely pleading with him. I think the idea is to recognize that there is a right in people to use reasonable force to defend their constitution, and if it is overthrown, to restore it. I have in mind situations like we had in 1986 I think in Philippine where the people refused manipulation of elections and they took to the streets. They did not have arms, and they would have been mowed down if some faction of the army had not come to defend them as it were, and said 'go on, resist'. So, Mr. Chairman, I think while I do not believe in violence as a primary means of deciding issues, I think there are times when it is necessary and I think this Clause as drafted, takes care of the two situations. Thank you, Mr. Chairman.

MR. ADOKO NEKYON: Mr. Chairman, I am co-sponsor of this amendment and not just somebody who seconded. I share the concern of all those Members who have expressed the view that this amendment as presented by Hon. Nyeko falls short of the purpose of this provision, and this has happened because there was some mistake made by the secretariat. When I presented my proposed amendments, they were in two sections. I was amending (a) separately and (b) separately. But now when they printed, they merged even (b) with (a) when in fact my amendment in (b) is still pending. So, the merger should have been only for (a) but (b) should still remain intact. This is what was agreed on in the committee, but then I see they are all put together. So, we should insist that (b) should remain separate.

THE CHAIRMAN: Hon. Nekyon, can we hear then from the Chairman of the Legal and Drafting or his Deputy to clarify on the question of the drafting of the amendment so that we proceed in a manner that is informed.

MR. WACHA: Mr. Chairman, yesterday I did indicate when I was presenting our report that there was some few mistakes in the circulated document which is forming the basis of the Motions which are being presented before the Floor. And I did indicate that, I talked to the various Members - the various sponsors of this Motion, and agreed that their Motions should come out as they had indicated and as they had submitted them to the Legal and Drafting committee. Hon. Nekyon has not indicated to me that his Motion as presented was not in the format

that he wanted it to be. But if he does now indicate that it is not in the manner that he wanted it to be, I think it is only fair that it should come out the manner he wanted it to be. I wanted at this stage to draw your attention to the next Motion which is number ten (10), for Dr. Epak. It is mutilated and I think it should be allowed to come in the format he wants it to be. Thank you.

THE CHAIRMAN: Now that means that, we call this amendment the Nyeko amendment and Hon. Nekyon will come with his amendments subject to what proceeds with regard to Hon. Nyeko's amendment. Because if it is carried, and it wipes out (a) and (b), then you will not have the chance to indulge in (a) and (b). So we proceed with the amendment as a reference to Hon. Nyeko, and then depending on how it proceeds...

MR. KAVUMA: Thank you very much, Mr. Chairman. I am seeking clarification because when we started debating the amendment Sir, it was assumed that the Motion had been seconded by Hon. Nekyon. So, technically we moved and I think our records need to be put proper, either we have somebody formally seconding the Motion, or we delete it. If not that, then may be the assumption will be that those who have spoken in support of it or one of them did second it. But I think there is something we must clarify, either the motion was not seconded and, therefore, we leave it, or we correct the record. I thank you, Sir.

THE CHAIRMAN: Yes, we proceeded on that assumption but since that time we had support for the Motion on the Floor, we shall regard Hon. Okalebo as the seconder, and there is also Hon. Karuhanga so it has achieved a substantial number of secondment. Let us agree on how we are going to proceed. There is Hon. Nekyon on the Floor but he has raised a point that his amendments are not covered in this brief amendment as moved by Hon. Nyeko. Hon. Nyeko's amendment has received secondment although belatedly but I think it wipes out any defect you may have heard in our procedures. Now is Hon. Nekyon continuing to speak for Hon. Nyeko's Motion, or he would like to -

MR. ADOKO NEKYON: Sir, may be I was misconceived. When I was addressing you I said I had two amendments, one in (a) and one in (b) and I had agreed to merge the one in (a) with Nyeko's. So my name still stands there for the first amendment.

THE CHAIRMAN: The effect of what I am saying is that, if Hon. Nyeko's Motion is carried, then your second Motion drops because it will have replaced both (a) and (b). So you should be prepared for this. That is what I am trying to say.

DR. NYEKO: Thank you very much, Mr. Chairman. In view of the preceding discussion, and in view of the fact that there was a small mistake or error in the final reports of the committee, I would like to still stand with Nekyon that this amendment stands for 4 (a), and then we leave 4 (b) to be discussed separately. I am doing this mainly because we were still of the view that the word "resistant" or to resist is a bit too strong for Chapter 1. Thank you. We have already used the word defend the constitution at all times. But I would like to confirm that our Motion deletes 4 (a). Thank you.

THE CHAIRMAN: Hon. Nyeko, you are now introducing a new element. The question which I proposed to the House and which we deem to have been seconded and is being debated was put in more specifically, "delete (a), not deleting Clause (4) and substitute therefore, the Clause as re-written and (4)". Now what you are saying by saying you are prepared to take (a) means you are actually seeking an amendment of your own Motion.

DR. NYEKO: Yes. Delete (a) only.

THE CHAIRMAN: So, unless you get another Member to move and is accepted by the House that let us argue and debate 4 (a) and that, your Motion as I proposed be amended by making a reference to (a) alone, we will make it difficult to proceed.

MR. KOMAKEC: Thank you, Mr. Chairman. From the explanation given, Mr. Chairman, it would appear that the problem with the Motion on the Floor by Dr. Nyeko only arises from the preamble then deleting the whole of Article 4. If he could modify his amendment by removing only Article 4 (a), I will support the Motion. Because, I think it is a good Motion. It is a Motion which makes the provision general. The constitution should be general - I like the wording. So, I am saying here that, I would rather amend the Motion by deleting only sub section (a) of Article 4. So, I would move that, Dr. Nyeko's Motion be amended by deleting sub section (a) of Clause 4 and inserting the following phrase as it is

MR. MULENGA: Mr. Chairman, in view of intimation from the Chair, that Hon. Nekyon will be

given opportunity to move his Motion as it is, and in view of what Hon. Nekyon has indicated that he intends to do so, would it not be appropriate to request Hon. Nyeko who confirms that what Hon. Nekyon will move is similar to what he has moved, to withdraw. I am appealing to Hon. Nyeko to withdraw so that we tackle the Motion of Hon. Nekyon which will include his.

MR. WACHA: The point of information, I moved a Motion which I believe was actually seconded. But I think Hon. Mulenga just cut in the seconder. I moved a Motion restricting the Hon. Nyeko's Motion to only (a). Because that is what is being debated. Leaving the other Motion - which we do not know - the Motion by Hon. Nekyon you. So I moved a Motion and that Motion was seconded.

THE CHAIRMAN: Yes, I have note of your Motion. Hon. Mulenga raised a point on the question of procedure, and it would have been improper to proceed without hearing in case it helps us in resolving some of the points that arise from the present situation. Now the matter before us is this, that there is a Motion by Hon. Nyeko which in its initial form stated that it was a Motion in reference to the entire Clause 4 of Article 3 of the Draft Constitution. It has transpired that, that creates difficulties with regard to the intention of Hon. Nekyon to move the subsequent Motion. I have advised or rather clarified that, it would be in appropriate for us to assume that merely because parties prepared to change their mind. That affects the Motion which had been proposed, was on the Floor and was being debated. Now, the only way that the chair will feel comfortable, is by way of amendment to the Motion of Hon. Nyeko restricting that Motion to paragraph (a). Hon. Komakec has moved a Motion to that effect, that the Motion I had proposed be amended by deleting the reference to paragraph (b) of Clause 4 and that it be restricted to paragraph (a) of Clause 4. Hon. Komakec says it was seconded. Apparently it was seconded by a Member for Avivu. Now, I do not think we should really discuss that. I would suggest that we go straight and agree on it by vote.

(Question put and agreed to.)

THE CHAIRMAN: The Motion now is restricted, we can now proceed to debate knowing that the second leg i.e. paragraph (b) of 4 is not affected, we are only dealing with paragraph (a).

MR. NEKYON: Thank you, Mr. Chairman, for the correction. My amendment in that section was to delete every thing after the word *constitution* in the first line, and up to the word *order* in the last line. So, the reading would have been, "*That all citizens of Uganda shall have the right and duty, at all times, to defend this constitution.*" And then we proceed to (b). But because Hon. Nyeko had his own idea we agreed in end with advise of the committee to consolidate the two. My reason for having reduced that section was that, if you left the words "*group of persons seeking to subvert or overthrow the established constitutional order*", we are creating a dangerous situation there. You are licensing somebody to use any means which we do not know to deal with whom he thinks about to subvert or to overthrow the constitution. Somebody will, therefore, go to a bar and find two or three people whispering about something he does not know but because he has always seen that they are opposed to the government of the day, he will then conclude that these people are actually plotting to subvert the constitution or even to overthrow it, and then his way of resisting we do not know, he could go and look for a hand grenade and throw at this group of people to resist them because they are about to subvert the constitution. Now in my mind, I do not think that is an orderly or civilized way of dealing with the situation. I therefore, draw the attention of the committee to the provision in 47 (2) which Hon Karuhanga has already talked about, but I want to illustrate it. In 47(2) that very intention is more clearly spelt out, because therein the method of defending the constitution is provided, and that all able bodied citizens are obliged to under go military training for the defence of this constitution, and the protection of the territorial integrity of Uganda wherever called up on to do so, and the state shall ensure that the facilities are available for such training, for defence of the constitution. But in the other section, it is left to any individual to decide on his method of resisting somebody whom he suspects to be subverting or about to subvert the or overthrow the constitution. That is why I thought, we should remove that part because it is dangerous, it can be misinterpreted and misused by people who may not have the best will for the country. And this is exactly why I moved the other amendment in (a) and my amendment of (b) was circulated to all the Members previously, and they even went to the committee. So there is no question of change of mind. Thank you

THE CHAIRMAN: Now of course, we have to reframe properly, because in case this thing is approved, if these Motions are approved, it will stand part of the constitution. So, the effect of Hon. Nyeko's amendment is that, if we are restricting to (a), he is saying the words, "*All citizens of Uganda are obliged to adhere to this constitution and have the right and duty at all times to defend this constitution*". That is how it can make sense, given the way it has now been written. But that means we have also got to carry out the consequential amendment to be, *all citizens of Uganda* in (a), now (b) means we shall start with the word *shall* in place of the word *to*. You would have to delete in (b), the word *to* and put there the word *shall*. So that can be a consequential amendment depending on how we proceed with (a). But (a) now as it is being amended, would read, let me say it again, the opening words would be, *all citizens of Uganda are obliged to adhere to this constitution and have the right and duty at all times to defend this constitution; and then* we go on to (b) which if we approve that, would invite the consequential amendment at the beginning of it. But let us debate the merits of the amendment as couched by Hon. Nyeko.

MAJ. ONDOGA: Mr. Chairman, I stand to oppose this amendment. To begin with, if you read the first part of the amendment it says, *all citizens of Uganda are obliged to adhere to this constitution*. Now, if you read Article 2 of the same Chapter it says, "*This constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda*". My understanding is that, the amendment is just a repetition of this article in other words. Secondly, Mr. Chairman, I do not agree with the submission by the mover of the Motion, that it will scare the people. No, it will in fact encourage the people. The people of Uganda, Mr. Chairman, have never at any one time overthrown their own constitution. Now what we are telling them is, if any one tries to overthrow your constitution rise against him. (*Applause*) So, we are not scaring the people of Uganda. We are on the contrary encouraging them to stand up against anybody who will try to trample their rights. It is on the contrary, those who have arrogated to themselves the rights or the position of being leaders of the people of Uganda, whom we are scaring. And these are the people who have in the past overthrown constitutions in this country. And we have got every right to scare them, if we are scaring them. (*Applause*) To proceed further, Mr. Chairman, there is the question of force, that we

should not include things like force in the constitution. The constitutions of this country have always been overthrown using force. And Mr. Chairman, as a natural scientist I can tell Hon. Members that there is a law of science which says, *For every action there is always a reaction which is opposite in direction but equal in force*. We are reminding the people of Uganda, because they are part of nature, to arm themselves with that law against anybody who will try to move against their rights and interests. Finally, Mr. chairman, it was also submitted that, the article as it stands in the Draft Constitution is too broad. Mr. Chairman, I think, the right for the people of Uganda to defend themselves should be limitless. We should not limit the rights of the people to protect their interests and demands. Thank you, Mr. Chairman.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. I must say that although I am a Member of the Legal and Drafting Committee, when these amendments were submitted I was away on some other business. Therefore, when I speak people should not say that I am differing from something which I agreed to. Mr. Chairman, I also want to express my view that I do not accept this amendment because there are three concepts in the present wording. One is that the people of Uganda have a right and a duty to defend their constitution. The second is that should anyone try to overthrow it or abrogate it, the citizen of Uganda have a duty to resist that person or group of people. And thirdly, should those people succeed in overthrowing the constitution they have a duty to try their best to restore the constitution. Now those amendments are trying to dilute or even remove altogether the principles. That is why really I am insisting that we should look at the principles the clause is trying to provide rather than just play about with words. The present drafting is exactly what presents those three principles I have talked about, and they are done in an excellent manner anyone could have wished. So really we should not tamper with these principles by introducing words which make them less effective. I thank you, Sir.

MR. ODOY-ASOKA: I do support the amendment for the following reasons. One is that, if you leave the draft as it is, you are actually encouraging indiscipline within the citizenship. The reason is, that in any situation when a government - whichever government - is in power, there must be people who may be opposed to that government. There is never

anywhere a government which is supported 100 per cent. Now what we want to do in this constitution is to produce a constitution which will bring about harmony, discipline and not thuggery within it. So, I support the Motion to read as the Chairman, has previously amended, that *all citizens of Uganda are obliged to adhere to this constitution and have a right and duty at all times to defend this constitution as 4 (a) and (b) to be left as it is, to do all in their power to restore this constitution after it has been suspended, overthrown or abrogated contrary to its provisions*. Now, you can see that with these amendments and leaving (b) as it is, all that Hon. Kanyeihamba was afraid of, is well catered for and therefore, I support the Motion as the chairman has suggested the amendment in the beginning and connecting it with (b). Thank you, very much, Mr. Chairman.

MAJ. GEN. TINYEFUZA: Thank you, Mr. Chairman. Initially I had wanted to seek clarification from the Mover to clear my mind because when I look at the proposed amendments in effect really they do not add on anything new. My worry is basically on the following words, if I am wrong I could be helped, *Seeking to subvert*. I think this is what they are trying to remove from this article. The rest actually as far as I am concerned, means almost the same because they say, all citizens of Uganda shall have the right instead for them they make it even stronger, they say are obliged whatever that would mean, and then even Hon. Nekyon suggests to leave (b) as it is, and then in (a) they also talk about defending it. So I think the problem is the word *subvert the constitution*. Where does it start and where does it end? I think this is the problem. Therefore, I would imagine that because we are talking about resisting, that people should resist with everything available to them against any group of persons seeking to subvert or to overthrow that constitution. I think the correct thing should be that, people should start resisting actually even using arms when somebody tries to over throw this constitution. But the current wording under debate allows people to start resisting even with arms on a mere suspicion that somebody has started subverting this constitution. I think this would be very dangerous and I think this is where the confusion is. So, I would like, Mr. Chairman, to call upon the Movers to see how we can tone down or even remove *subvert*. For subversion is really a political term which covers political dissent, covert or otherwise. Now should it be allowed as it is now it would cause confusion. Thank you, Mr. Chairman.

THE CHAIRMAN: We have had actually a very broad debate on paragraph (a). Hon. Tinyefunza made his comments and appealed to the Movers. As a Chair I cannot impose on the Movers the need to change their drafts. If they want to leave it as it is then we proceed to vote for or against it.

MR. KISAMBA MUGERWA: Mr. Chairman, it was not a Motion but actually it was along those lines similar to my line of thinking that the problem lies on the interpretation given by Hon. Nekyon where he said that one to resist any person or group of persons seeking to subvert or overthrow could go to the extent of just throwing the grenade at people. If he could clarify where it starts, how and who judges the situation that one is seeking to subvert or overthrow the constitution. I think we would go along with the Clause as it stands because the amendment, the way it appears now. I would agree with those who have submitted that it is already taken care of in 2(1) but it introduces the word "*defend*" and leaves out "*resist*". If resist has some ambiguity then we have a problem. If we could have either the Chairman of the Drafting Committee or the Mover and I would not mind the Chairman too, to clarify or give a technical interpretation of this clause "*seeking to subvert or overthrow*". I think that, that is where the problem lies. Mr. Chairman.

THE CHAIRMAN: Hon. Tinyefunza restricted his remarks to the words "*seeking to subvert*". They have added the word "*resist*". Now, there are two Movers of the amendments and Hon. Nekyon did say that the wording as it is can cause problems because it is not precise. Now, the position is that unless really you want to change Hon. Nyeko Nekyon's Motion by a formal amendment of the proposed amendment or unless the Movers are prepared to find other words to insert in the amendment and if the House so agrees then we can proceed that way but let me hear from Hon. Nekyon. We are taking a long time on this particular paragraph.

MR. NEKYON: Mr. Chairman, in view of the fact that there is a divergence of opinion on this issue and in view of the fact that I feel in the same way that Hon. Tinyefunza feels and others, that unless this is clarified, its being left in the Constitution opens a very dangerous provision. I move that this amendment be referred to the Committee for re-examination and re-drafting because there is no way we are going to do redrafting on the Floor of this House.

MRS. MUKWAYA: Mr. Chairman, I am getting worried because originally when we started we decided that all the amendments should go to the Technical Committee. This morning we have heard from the Vice Chairman, Hon. Ben Wacha, that No.10 and No.9 have a problem yet they had already been to the Technical Committee. Now, after taking all these hours discussing in the House, a Motion is being moved back to the Technical Committee. Then are we saving or are we wasting more time? Then, Mr. Chairman, I move that you put a question.

THE CHAIRMAN: Now there is a Motion by Hon. Nyeko and Hon. Nekyon. We have debated it but just as I was moving towards putting to the House for a vote ideas came that may be a problem in relation to paragraph (a) and (b) as they arise from the use of certain words. If I put the question we shall have resolved the question of Hon. Nyeko's Motion. It may be carried, it may be lost. If it is carried then (a) will be amended in terms of the Motion. If it is lost then (a) will remain as it is but without attending to the areas which are of concern, namely the use of the word "*resist*" and "*seeking to subvert*". To what extent in terms of law do you go? Now, in other words, this is not a case where if we vote we shall have solved the problem.

MR. RUZINDANA: Mr. Chairman, I wanted to seek clarification from the Movers how their amendment differs from Article 39(b) which says that "*...it shall be the duty of every citizen to uphold and defence this Constitution and the law*". Now, sometime back we had assigned the Legal and Drafting Committee to look at Sections of Chapter 3 which may be duplicated or reproduced in other Sections of the Constitution and then they reconcile them. Would this not just be a question of reconciling or of relocating Article 39(b) to may be the First Chapter. Would they mind if this one was relocated there and then cater for their amendment in which case this could be done by the Legal and Drafting Committee. Thank you, Mr. Chairman.

THE CHAIRMAN: I think that question is not to be addressed to the Movers. I think what you are seeking is advice from either a member of the committee on how they are handling Chapter 3 and how they propose to handle such provisions. But let us hear from the Chairman of the Legal and Drafting Committee in view of the comments of Hon. Ruzindana.

DR. KANYEIHAMBA: I thank you, Mr. Chairman. I do not see any problem with the way it is worded here *seeking to subvert or overthrow the Constitution*. The point I was asked clarification, is because one or two people have raised issues on those words. Some of us do not see any difficulty with them. So, why should we continue debating. Why can we not put the matter right? It is not as if this thing is subversive, rather it is a defect in wording. It is just a question of choosing certain words simply because they sound suitable in your ear but actually the substance is the same. So, my advice would be that whatever words come afterwards they are not going to improve the substance contained therein. Secondly, Mr. Chairman, with due respect, there has been an attempt to separate these principles which I stated, the right to defend, the right to resist, those who want to subvert or overthrow the Constitution, and the right to restore - they go together. If we start tampering with the way they are worded here then we shall lose meaning. So, there are those of us who are clear that this clause represents what we want. There are others who have also put their case very clearly. So, I think we should put the question. I thank you.

MR. ABU MAYANJA: Thank you very much. I think I see that we may find ourselves in grave difficulties if we follow the course we are now embarked on. Under Section 12 (2) of the Constituent Assembly Statute, the Attorney General is required to provide the Assembly with the services of a Technical Committee to prepare the Draft of the Constitutional Text. Now it seems to me, since I came here that we are now really preparing the Draft itself here in this sitting including putting in the commas, making the consequential amendments whereas in my humble submission our duty should be to agree to the principles, the real sense of the provision in each article and then leave it to those people whom the Attorney General provided and are there, who would make the Draft so that it is internally balanced and internally consistent. That is one problem. But if we do not do that and we follow this and we start getting the precise meaning of subverting, overthrowing, attempting, doing this and that, we are going to be here, Mr. Chairman, for a very long time. Since we came back and started the consideration stage we have done one Article and we have not even completed it.

THE CHAIRMAN: Hon. Members, that may be so in terms of what the Statute provides but also we

made our rules here and in those rules we have made a procedure. Now, the only way is to find the ways of quickening our work. Let me hear one last speaker and then we proceed on the subject.

MR. SAM KUTESA (Mawogola): Mr. Chairman, it seems to me that the emphasis is being laid on words like "seeking to subvert or overthrow" but if you listened carefully to Hon. Nekyon's submission, his worry is abuse of this Article and he is saying that someone could just look at you two people whispering and he says these people are about to subvert and overthrow the Constitution. Then what happens he says, I must resist them and then he throws a hand grenade. I think the course to take is to retain this Draft as it is but to say "all citizens of Uganda shall have the right and duty at all times to defend this Constitution and, in particular, to report to lawful authorities any person or group of persons..." *(Interruption)*- Yes, I will make my point, Mr. Chairman. The point I am making is that throughout this debate we have been creating the offence of treason, nowhere have we actually created the offence of misprision of treason. Misprision of treason is a duty on any citizen to report to lawful authorities anybody he suspects is going to commit treason. Mr. Chairman, there are adequate provisions like Article 47 which already empowers citizens to resist anybody overthrowing the Constitution. We are even talking about training citizens. I think Hon. Members here may be taking it lightly thinking that it may not affect them. You may be the first victims of some of these provisions and I would like to call upon Members not to reject Hon. Nekyon's amendment out of hand simply because it is moved either by Nekyon or you think you are a little more comfortable today.

THE CHAIRMAN: Hon. Member you should not impute improper motives.

MR. SAM KUTESA: I withdraw that part, Mr. Chairman. The point I am trying to make, Mr. Chairman, is that there is a possibility of abuse of this Article and this is what Hon. Nekyon has pointed out and I think we should be able to find a way of stopping or finding the wording that will stop the abuse of this Article. That is why I believe that if we talk about resisting, yes you will resist when a man is overthrowing a Constitution but the initial step, when you hear of it, please report to the lawful authorities. It should be your duty, in fact, if you hear someone talking about subverting the government

and you fail to report, you will have failed in your duty and you should have committed an offence. That is what I think is the offence of misprision of treason. I would like to appeal to Hon. Members, through you, Mr. Chairman, to consider using the term "report to lawful authorities" instead of "resisting" in this Article. Thank you.

THE CHAIRMAN: That amounts to another Motion of amendment but I thought that misprision of treason is part of our law right now.

MR. SAM KUTESA: It is in the Penal Code, so is treason, Sir. Treason is also part of our law but we are putting it in this Constitution.

THE CHAIRMAN: Now, let us proceed this way. We have heard a very eloquent debate for and against the Motion moved by Hon. Nyeko. We could go on and on. Let us resolve the matter by the procedure known to us and then proceed from there. I will now put the question. I am now putting the question on Hon. Nyeko's Motion that that Clause be amended in (a) to read "All citizens of Uganda" that means you delete all the words "shall have the right and duty at all times" and just say "All citizens of Uganda are obliged to adhere to this Constitution and have the right and duty at all time to defend this Constitution." That is how the new paragraph (a) would read if this Motion is carried. So now I put the question.

(Question put and negatived.)

THE CHAIRMAN: Now, Hon. Nyeko and Hon. Nekyon's Motion on paragraph (a) is negatived and now Hon. Nekyon you move your amendment on (b). *(Interruption)*. Order, order. Can I now hear from the Deputy Chairman of the Legal and Drafting Committee?

MR. BEN WACHA (Oyam North): Mr. Chairman, I was craving your indulgence to allow me to move a Motion under (a) before we move to (b).

THE CHAIRMAN: And will it be materially and substantially different from the one which we have just negatived?

MR. BEN WACHA: It should, Mr. Chairman. Mr. Chairman, sir, I want to move a Motion under (a) by deleting two words and these words are "subvert" and "or". This would then mean that the

Article and the sub Article would read as follows: "All citizens of Uganda shall have the right and duty at all times - (a) to defend this Constitution and in particular to resist any person or a group of persons seeking to overthrow the established Constitutional order."

MR. RINGWEGI Seconded.

THE CHAIRMAN: Order. Let me clarify. By leave of the Chair the Hon. Member has been allowed to move a small but vital amendment by deleting two words. The words are "subvert" and the following word "or". I think that was the worry of some of the Members. It has been seconded by three Members but more particularly Hon. Ringwegi. First of all, let the Member talk on his Motion now that it has been seconded, then we proceed. We must follow procedure please.

MR. BEN WACHA: Thank you, Mr. Chairman. Mr. Chairman, Sir, in making laws and particularly in making our fundamental law we must guard against possibilities of whatever provisions we put in our laws being misused by persons in authority or persons who might find themselves in positions of responsibility. Mr. Chairman, sir words which put in our provisions of the laws must be clear and should never at any one particular moment be misused or be used against individuals who might be against us or might be thinking against the principles that we stand for. It is because of this, Mr. Chairman, that I find that words like "to subvert" could be misinterpreted and used against persons who think politically differently at any one particular time. You will recall, Mr. Chairman, that during Amin's time words like "subversive element in society" were very rampant. Now, as to how you interpret the word "subversive" was left to any individual Military Officer or Intelligence Officer. I am asking, that this House should be restrictive in its interpretation of provisions of the Constitution and should not give lee-way to interpretations that could be counter-productive and that could be used to citizens of this society who are expressing views which might be different at that moment to the views of those in authority. Sir, with these few words I beg to Move.

MR. NGOBI (Presidential Nominee): Thank you, Mr. Chairman. The objection that has been raised initially by Hon. Nekyon and also several others, the question of persons seeking to subvert or to overthrow is two way. On this one it is not that I am

opposed to the Motion but I think that the Motion has not gone far enough. If we adopt it we still have not solved the problem because when you talk about a group of people seeking to overthrow, you have several categories. You may have people who are genuinely doing so or people who will be victimised because they are suspected of doing so and since it is something in the future, anybody can say this group is seeking to overthrow the government even if you leave out the word "subvert." I am informing this House that I am a victim. I was a victim of this similar provision. Parliament passed an Act to arrest or do anything to people who will be trying to overthrow the government and, of course, I voted for it but I was among the first victims, completely innocent because the subsequent actions did not prove anything at all that there was any substance in the allegations. Now, Hon. Kutesa has talked about the obligation to inform the authorities about any group that is planning or seeking to do this. In fact the problem here is not that the Government does not know the people who will misuse this will be the government. So, to go and say that because you are going to inform the Government, therefore, you are solving a problem, you are not. So, Mr. Chairman, I think that we must find a way of removing that possibility so that innocent citizens of Uganda are not victimised unnecessarily. It is unfortunate that the first amendment by Dr. Nyeko has been thrown out but I think in this move to try and give a solution to this one, the words to be removed should not be only those two because it is not just a question of subverting but the thing is, the suspicion that will come which may cause people to be victimised. *-(Interruption)-*

THE CHAIRMAN: You are seeking clarification? Let the Hon. Member make a contribution then I will come back to you

MR. HASHAKA (Kibale County): Thank you, Mr. Chairman. I tend to disagree with the previous speaker, Hon. Ngobi, seeking merely to omit "overthrow" when in actual fact the main theme of this sub-Article (a) surely circles on somebody particularly intending to overthrow this Constitution. I would tend to agree with the Mover on purely omitting two words of "subvert" and "or" so that the rest really reads the same. I would want to consolidate it further, Mr. Chairman. By saying that this word "subvert" is fairly too long and too wide and always used by politicians to against innocent citizens, so I am in total support of only removing the two words "subvert" and "or" and leave the whole

sub Article read as it is. Thank you very much, Mr. Chairman.

DR. MIYINGO KEZIMBIRA (Bukoto mid-West): Mr. Chairman, I am seeking clarification on the implication of the word "subvert." To me probably as a lay man I think that subversion is implied even if you just use the word "overthrow" because I think it is a process towards overthrow. So, whether we put it in or leave it out somehow it will be implied by lawyers and the law.

MR. RINGWEGI (Padyere County): Mr. Chairman, I think I can also give that clarification that is being sought. The word "subversion" may be implied in the word "overthrow" but then the word "overthrow" is more explicit. You must have concrete steps which can be defined in order for anybody to say you are about to overthrow whereas subversion is so amorphous. Subversion is only left to the interpretation of the person alleging. Overthrow may mean that you have been caught with some instruments or logistics, you may have taken concrete steps in preparation to actually destroy the constitutional order. So, the word "subversion" is the word which I think we should endeavour to remove because this word has no legal basis at all. It is just a political visualisation of dissent. I think if we remove this word, it can be allowed under our constitution to organise dissent which should be listened to but then we should try to prohibit actions which are going to overthrow a constitutional order. Mr. Chairman, that is why I am imploring Hon. Delegates to support this proposal for the amendment. Thank you, Mr. Chairman.

MR. BABU (Kampala Central): Thank you very much, Mr. Chairman. I stand to oppose this amendment on two grounds. One, the people who do abuse are the politicians; the people they are protecting are politicians; the people who subvert and want to overthrow the government are politicians. This clause as it stands protects the citizens because any time there is subversion eventually to overthrow, it is the citizens who suffer. Whenever these politicians are fighting among themselves and they are arresting each other, it is the citizen who eventually suffers. Now, Mr. Chairman, over the years *-(Interruption)-* I will take the information.

BRIG. KYALIGONZA: Information. Thank you, Mr. Chairman, and thank you Hon. Babu for yielding the Floor. Mr. Chairman, I would like to

inform the Hon. Speaker holding the Floor that it is not only the politicians who overthrow the governments, sometimes the politicians use the Army to overthrow governments and to a certain extent the Army are misused by politicians and therefore it is not the politicians who overthrow, it is always the army which overthrows.

THE CHAIRMAN: Okay, I think that is the question of saying that the instrument used extends to the Army. I think let us finalise this one.

MR. BABU: Yes, Mr. Chairman, since the word which is a problem here is "abuse" of this provision, we are here today to try and improve and make a Constitution that will not be used to abuse the freedoms of the people. If that is so, I would like to propose that this particular amendment be left out on the grounds that the people who are arguing are arguing for now not for the future because what is happening is this - *(Interruption)* - Protect me, Mr. Chairman. What is happening, in the process we have been in up to now a lot of suspicion has set in, a lot of suspicion between people has come in. But if you are in government and people are working out a small subversion and an overthrow of government, we are saying that we should not even attempt to try and find out what you are doing. Now, in case of countries that we have as examples, like Philippines, for example, where a government in power was beaten in the elections and the person who had won was being stopped from taking over power. The people themselves stopped the government in power and allowed the person who had won the elections to take over the government. I think this is where the important bit comes. The people are allowed to remain with their right to stop those who might want to overthrow the government.

MR. SAM NJUBA (Kyadondo East): Thank you, Mr. Chairman. I think I have discovered a way out of this problem. Mr. Chairman, the problem is that this provision is too wide. Every bit of suspicion, every bit of movement can be misinterpreted. So, I propose, Mr. Chairman, or recommend to this Assembly that we replace "seeking to subvert" by putting "any person who attempts by overt act to overthrow." Now that will have limited the scope of those who actually, not imagining but who are actually taking steps. If that is acceptable -

THE CHAIRMAN: What you are suggesting amounts to an amendment of the Motion on the Floor. Can I hear from the Mover before we move?

MR. BEN WACHA: Mr. Chairman, I would gladly accept that amendment.

THE CHAIRMAN: Hon. Ben Wacha, of course, according to our Rules although the Chair gave you the freedom of the Floor you are supposed to have written your amendment to us. I have been waiting for it.

MR. BEN WACHA: Thank you, Mr. Chairman, it should be coming in a minute.

THE CHAIRMAN: But now let us dispose of this. The Hon. Member for Kyadondo East in effect was moving an amendment to the Motion on the Floor and if he could repeat it so that we hear it properly. The Motion on the Floor is that Paragraph (a) be amended by deleting the words "subvert" and "or" appearing in the second line.

MR. SAM NJUBA: Mr. Chairman, I am proposing to replace the same with the words - *(Interruption)*- Let me read the whole thing, "(a) to defend this Constitution, and in particular, to resist any person or group of persons who attempt by overt acts to overthrow the established Constitutional order." The important words are "attempt by overt acts." Overt means "clear and visible act."

MR. KAVUMA: Thank you very much, Mr. Chairman. I think as Members of this august Assembly we need to benefit from what we mean by "attempt" and *overt*. Because, Mr. Chairman, in our normal law once you are charged with an offence which is an attempt to commit an offence, then there is a requirement that there must be proof of you having taken an overt action towards the commission of the offence. So, Mr. Chairman, I think we are here really playing with legal terminologies. The essence of the words seeking to be removed is part and parcel of the supremacy of the people which we have already approved. We are protecting the people against these, you know, Hon. Babu said politicians who normally want to subvert the constitution. It is a political terminology, we have already given it one leg by authorizing people to resist in defence of their supremacy and we are saying we should now take away the other leg in the same clause which relates to the political resistance which is subversion. So it is the political import which we are really trying to take away. We should not give the people with one hand and then take away with the other. I think we should protect their supremacy wholeheartedly. So,

this tendency of thinking that when we say "overt action" will now cover the situation, to my mind is misleading in legal terms.

THE CHAIRMAN: Hon. Kavuma, when you took the Floor you were seeking clarification but you ended up bringing an argument. In fact, the position now is that we have an amendment of the Motion originally set, it has been accepted by the Mover but, of course, it should have been by a form of a Motion so that we formally amend according to our records - but Members are seeking clarification. What I am now doing is going to take the point of clarification and then proceed with the next stage.

DR. KAZIBWE (Kigulu South): Mr. Chairman, I want to clarify to the Members that these words "subvert" and "overt" are pathological words. They all stand to be interpreted by who is on the front line. I want to support Hon. Ben Wacha's Motion by saying that removing these words "subversion" and "overt" will clearly give the law or the person who is interpreting the law, the one with the legal tools, the right position to take in, otherwise, when you are in power these words are very useful but when you are not they are very dangerous because even the people themselves can stand to actually interpret you whoever is in government as being subversive, but, you have the tools when you are in power to interpret anybody's action as being subversive and implement whatever you want to do. So, Mr. Chairman, I want to support the original Motion as moved by Hon. Ben Wacha. You put the question, Mr. Chairman.

MR. AMANYA MUSHEGA (Igara County East): Mr. Chairman, I am supporting the amendment by Hon. Wacha with these reasons. I think our primary job here is to defend the Constitution from being overthrown and not to prevent the government from being changed which seems to be the problem. And the submission by Hon. Babu was a bit misleading because it looks as if soldiers are like empty baskets in which you draw litter and take it out; that politicians misuse those soldiers as if soldiers have no brains. Soldiers also have independent political views. The people, the citizens and politicians - every politician is a citizen - I think we have a bit of mixed politics here and it may not take us too far. But my main worry really, Hon. Abu Mayanja raised this point although it was brushed aside, is really taking a Medical Assistant in a surgical ward without even equipment. Because our main job here should be to take the principles which we want incorporated in the

Constitution because these words we are using now like subversion, like seeking, like attempt, have meaning unless if we are going to bring a library here of legal interpretations and dictionaries; these are necessary. So, I would like to appeal to my colleagues through you, sir, that once we have stated what we want written in the Constitution and that is why we have a Drafting Committee which will go and look at the various meanings of all these words and chose which is the most appropriate according to what we want. So, I am supporting the amendment in principle that we seek to defend the Constitution from being overthrown, to prevent being overthrown in one terminology then they look for the appropriate words to ensure that our meaning is put in place. But I think, sir, this Assembly as we are now, without the technical books and the various interpretations is not really equipped to write the final words because words have meanings, they are not just used for the purpose of it. So, I am supporting this amendment because the main purpose is to prevent the Constitution from being overthrown but our debate is as if we are trying to prevent. It has happened in the history of Africa that sometimes when you oppose a government or even an individual, the difference between the government and individual and the Constitution are sometimes taken to mean the same. So, we have that history of Africa and Uganda in mind but we must divorce ourselves also from that history and try to build for the future and the whole purpose should be to have the instrument to prevent the Constitution from being overthrown but not to prevent the government from being changed constitutionally. I support the amendment by Hon. Ben Wacha.

I have a bit of problems with the amendment by Hon. Njuba. If they gave it to the Draft Committee they would marry the two properly having looked at the appropriate words to use because we are now not sure whether we should use the same covert or overt because if the act is overt it is almost through. The most dangerous acts of overthrowing a Constitution are the covert acts.

THE CHAIRMAN: Point of order. Let me put the question on Hon. Ben Wacha's Motion. The rest have been contributions along the way.

MR. ABU MAYANJA: Point of order. There is something which is really confusing. Hon. Njuba moved an amendment to Hon. Ben Wacha's amendment which was accepted by Hon. Ben Wacha. Now what is the position, Mr. Chairman - *(Interruption)*-

THE CHAIRMAN: A mere acceptance by Hon Ben Wacha does not change a Motion which has been moved and proposed and is under debate. He was expressing non-hostility to the kind assistance by Hon. Njuba. Hon. Njuba's Motion was not seconded nor was it moved. Now, the question was proposed on it. So, the Motion we have on the floor right now is the Motion moved by Hon. Ben Wacha, seconded, proposed, debated. That is why I said we shall regard the various views as mere contributions on the question. So, I do not know whether this is really so urgent that we cannot do without it.

THE CHAIRMAN: If it does not take us back. I know you have been putting up your hand for a long time.

MR. OBUA OTOA (Erute County North): Sir, I am seeking clarification as to the amendment which has been accepted by the Hon. Ben Wacha. The amendment says that, 'anyone who attempts by overt act'.

THE CHAIRMAN: We have already ruled on that one. I have ruled on that one. I have said it was not proceeded with, as far as the Chair is concerned it was a sign of non-hostility on the part of Hon. Ben Wacha. The Motion on the Floor is one of Hon. Ben Wacha and the Motion is seeking to remove the words "subvert" and "or" appearing in the second line. So, we vote on that.

(Question put and agreed to.)

THE CHAIRMAN: Now, we go on to paragraph (b).

AN HON. DELEGATE: Mr. Chairman, I would like to move a Motion, an amendment without notice on 4.

THE CHAIRMAN: You see, I think, Hon. Members, as has already been said, there are attempts to move more Motions of amendment including Motions of amendment to (a). I think we can never settle this matter here and we shall go around in circles. We have debated at great length paragraph (a) including the introductory words at one time amended them. Now if we allow any more Motions without notice and we did agree in principle that Motions without notice should relate to Motions already moved but not to be originating new ideas. Otherwise, we shall never finish this job we have to do. So, I would like

to appeal to Members to desist from continuously thinking of new amendments. At this stage I would like to appeal to Hon. Members that I do not see anything really substantially difficult with the opening words, for instance, of 4 and given the amendment that has just been carried. I do not see any need really to revisit such. When you want to move a Motion, Hon. Member, you should also look at the constituency because you may move it and it does not go very far. But let us hear what you want to say.

MR. SSEMAALA KIWANUKA (Kyamuswa County): Mr. Chairman, I would like to amend that the word " duty " be deleted from that *-(Interpretation)*. Gentlemen, you should listen to me before you say, Ah!

THE CHAIRMAN: You cannot proceed to talk on it unless it is seconded. Have you got a seconder?

MR. SSEMAALA KIWANUKA: Well, if they can listen to me, all my seconders have already left. Sir

THE CHAIRMAN: No, you cannot change procedures.

MR. SSEMAALA KIWANUKA: Sir, I had a seconder. He had to leave earlier...

THE CHAIRMAN: Sorry, you do not have a seconder. So, we cannot proceed with that.

MR. NEKYON: Mr. Chairman, sir, I would like to move an amendment which was circulated on Sheet No. 12 last week. This is concerning 4(b). I would like to keep the whole provision as it is except that I would like to add two words. Now, I would first like to delete the word "or" on the last line and then replace it with two words or amended so that it will now read as follows: *(b) to do all in their power to restore this Constitution after it has been suspended, overthrown, amended or abrogated contrary to its provisions.* That is all. These are subsequential to an amendment on 3(2) which has already been carried. So, I was wondering whether it is necessary to move it or it would just be automatic.

THE CHAIRMAN: So, in other words your amendment really is to introduce the word "amended." Is that seconded?

HON. DELEGATES: Yes.

THE CHAIRMAN: Okay, the Motion has been seconded. I give the Mover the Floor for him to move his amendment.

MR. NEKYON: Sir, when moving an amendment on 3(2) I already gave reasons which are similar to this one. I did say that although we are fearing that somebody may suspend or overthrow or abrogate the Constitution and for that purpose we are providing the people with the authority to counteract such actions by rising against whoever tries to do any such act. In my opinion it is necessary to provide for somebody who pretends to be upholding the Constitution but then continues or goes ahead to make amendments which tend to alter the meaning of certain provisions. It is, therefore, the reason why I am inserting the word "*amended*" so the people can also rise up to restore any part which has been amended. Thank you.

AN HON. DELEGATE: Mr. Chairman, in view of the fact that this same amendment was moved and fully debated in Article 3(2) and carried, could it not be treated consequently where such appears so that we do not waste time on it, Sir

THE CHAIRMAN: Unfortunately, provisions of a law speak for themselves and they are self-contained unless there are such that you can tie one to the next but these two are not necessarily tied.

MR. NABUDERE (Budadiri West): Mr. Chairman, that word "*amendment*," unless we add the words "*unlawfully*" or "*illegally amended*" it will create problems. Yesterday, when we put the word *amended* to Article 3 (2) it was in the context that the word "*unlawful*" was there. Now, if we put the word "*amended*" here it means that even a person who has properly amended the Constitution would have infringed the Constitution. So, unless we have the word "*illegally amended*" or something like that.

THE CHAIRMAN: No. Prof. Nabudere. If you read what he is suggesting is that it is either overthrown or abrogated or amended contrary to its provisions. What I will not propose to do, I understand this matter was fully discussed yesterday, we should not waste any more time. The words to be removed, the word "*or*" immediately before the word "*abrogated*" and instead put a comma immediately

before the word abrogated. Delete the word "*or*" that is part of the Motion and insert a comma and then after "*abrogated*" insert the word "*amended*." Now, let me put the question.

(Question put and agreed to.)

THE CHAIRMAN: We have amendments proposed on Clause 5, 6 and 7.

MR. KIRENGA (Mityana County North): My amendment has not been called although I gave notice.

THE CHAIRMAN: You do not appear on my list. No, sorry, there is one by Hon. Okullo Epak, which is No.10, I had to move on to No.11 - but Hon. Kirenga I do not see your amendment.

MR. KIRENGA: In the notice circulated on 26th I appear as No.26.

THE CHAIRMAN: Which article does it propose to amend?

MR. KIRENGA: Article 3, Clause 4, - the introductory words.

THE CHAIRMAN: I think we shall come to you. I will give you a chance to move if you can make a copy available to me. Meanwhile there is a Motion by Hon. Okullo Epak under paragraph 10 which seems to take us back. Is Hon. Okulo-Epak here? Can you read out what you propose to amend? Because you have indicated that you are misrepresented, so we must ascertain what it is before we proceed with it.

DR. OKULO-EPAK (Oyam County South): Thank you, Mr. Chairman. I am sorry that for some reason or other, my Amendment which had come very much earlier at the beginning and was discussed in the Legal and Drafting Committee, was not reflected. And I now beg the indulgence of the distinguished delegates to read from what I had submitted and was distributed, and also to read what now incorporates improvement arising out of the fact that I agreed with Hon. Fiona Eggunyu to co-sponsor this Amendment and, therefore, I had to take into consideration some of her points. So, what I am going to read now does not typically resemble the first Amendment I moved and which was circulated, Mr. Chairman.

Mr. Chairman, I would like to amend clause 4 and all its paragraphs (a) and (b) as follows: *“All citizens of Uganda shall have the right to use civic disobedience and other lawful means to dislodge a government that has overthrown part or the whole of this Constitution or come to power by the force of arms”*

THE CHAIRMAN: This is cosponsored: so, it has to be seconded.

AN HON. DELEGATE: Seconded.

THE CHAIRMAN: Okay, now I give the Mover a chance to speak to the Motion, and since these two paragraphs have been fully conversed, we shall proceed quickly to voting after the mover and one or two people have spoken. Please move.

DR. OKULO-EPAK: Mr. Chairman, the essence of my Amendment arises as follows. In my view, the present paragraph (a) is too unspecific, too wide and indeed as far as I am concerned, speculative. That was my primary concern in seeking to delete paragraph (a).

THE CHAIRMAN: Do you take into account that we have amended (a)? We have just amended paragraph (a) by deleting the word ‘subvert’.

DR. OKULO-EPAK: There are other things I do not accept in paragraph (a). Mr. Chairman, like resist and so on *-(Interjection)-* Let me finish, because there are other things. As far as I am concerned, Mr. Chairman, paragraph (b) is sufficiently accommodated by the present Clause 3 of Article 3, which says, *“This Constitution shall not lose its force and effect even where its observance is interrupted by a Government established by the force of arms; and in any case, as soon as the people recover their liberty, its observance shall be re-established...”* I think this clause is really talking about re-establishment of the Constitution after it has been overthrown, and therefore, I find paragraph (b) trying to accomplish exactly the same thing, except that this restoration would come after resistance or war or whatever it is, lodged by the citizens. So, I do not see any substantive need for it in this particular clause myself. Further on, Mr. Chairman, the present formulation, as far as I am concerned, contradicts the spirit in the principle expressed in Article 3 which outlaws use of force and here we seem to be trying to provide for an exception. My

submission is that, Mr. Chairman, we have all along been talking about not permitting using unlawful means to overthrow the Constitution or to overthrow the government. And I take it as a matter of principle that we are really talking against resorting to use of force, and that is to me the most important principle we have established and which my delegation finds very good. But then immediately below we are seeking to provide an exception to that principle and I find it not acceptable, Mr. Chairman. We should not constitutionalise violence, Mr. Chairman. I do not think we should try to constitutionalise violence, if we can achieve what we want by other and particularly peaceful means. I am convinced, Mr. Chairman, that civic disobedience is a very powerful and least destructive strategy. Americans, got independence by declaring no taxation without representation, and that did it for the British administration. Ghandi used passive resistance in India and it also did it for the British administration in India; the people of Nigeria are currently and seriously engaged in using more peaceful means. We have just witnessed the kind of disaster next door which violence can produce. The present arrangement which is being made, in my view, Mr. Chairman, would be very difficult to organise and coordinate. If we allow citizens to upraise from all corners of Uganda, it will be uncoordinated, disorderly and tantamount to anarchy. However, we need public awareness and sensitisation of the people on their rights and spontaneous actions to enforce them. That is why I am proposing, Mr. Chairman, a new principle on public awareness as an additional Article 4, which will come soon afterwards in our course of discussing this chapter. Mr. Chairman, I am convinced and I beg fellow delegates to take this matter very seriously that we should honestly not constitutionalise force. I thank you, Mr. Chairman.

MRS. EGUNYU (Women Representative - Kumi): Thank you, Mr. Chairman. I am a cosponsor on the Motion on the Floor. Mr. Chairman, the Amendment seeks to allow the people to resist a government that has come to power by force of arms. This is one of the salient features of the amendment and is based on the wisdom of this House in passing Article 3, clause 3 of the Constitution to the effect that the Constitution shall not lose its effect where its observance is interrupted by a government established by force of arms. In that regard we should have the right to resist such a government so as to defend the Constitution. Mr. Chairman, further on, Article 59.1(e) recognises the right to associate in civic

organisations. The Amendment, therefore, seeks to enable the people to use this civic organisation, to develop and strengthen the civil society and enable the use of civic disobedience to enable the people to effectively defend the Constitution without the destructive effect of war, such as death and destruction of economic infrastructure.

Mr. Chairman, we have included the term 'other lawful means', because we feel that if we strengthen impeachment and through separation of powers, other organs of government, then we will be able to achieve a peaceful change of government and peacefully defend the constitution without necessarily engaging in violence. Mr. Chairman, the word 'other lawful means' does not preclude violence; violence should only be of the last resort, because violence is recognised under Article 47.2 which allows for military training to all able-bodied persons in defence of the Constitution. Mr. Chairman, we analysed the present Clause 4, in relation to Clauses 5, 6, and 7, in order to appreciate its practical effect. Mr. Chairman, Article 4 in its present context could be abused because: The phrase 'to do all in their power...' allows an open ended use of violence. I will illustrate by using the example of Kony. Kony could use Article 4, if he ever succeeded to get into government to justify armed rebellion, because democracy and defence of the Constitution are relative terms that are not defined here. Given the fact that by then anybody who would have overthrown the government has arms, the people cannot rise up to fight such a person. So, he would use Article 4, to justify himself, go on and use 5, to absolve himself of all liability, civil and criminal; and use 6, to release prisoners of war, who are in fact not really prisoners of war - for example, Kony's rebels who have been violating the laws. These can be released under Article 6; and under Article 7 compensate themselves from the consolidated fund. Although the citizens have a right under Article 3.3, on regaining their liberty to fight off such a person, by then the damage will already have been done - such persons would have looted the national Treasury and compensated themselves. Mr. Chairman, Clause 4 would be used to justify armed rebellion, then clause 5, 6, and 7 to reimburse such a person from the consolidated fund. This would lead to a situation of cyclic violence, political instability and undermine the supremacy of the Constitution. Mr. Chairman, that is why we sought to qualify the use of violence and make it of last resort by emphasising civil disobedience and other lawful means. Thank you very much, Mr. Chairman.

MR. KATUREEBE (Bunyaruguru County): Thank you, Mr. Chairman. I oppose the Amendment and I believe, Mr. Chairman, that this clause as we have it, as we have amended it, says what the citizens of this country want to say. Why should we restrict the resistance of the citizens to an illegal government that may have come in by force of arms? An example is being given of Kony that he be resisted only by civil disobedience. The people should be able to resist by all means depending on the situation! It would be ridiculous to say that if Kony comes tomorrow and takes over power after killing people and he has an Army, then the citizens merely go on the streets and demonstrate. Of course, that does not make sense. Secondly, the issue that is in paragraph 5, 6 and subsequently 7, is talking of a different idea - that this government may come in, however unlawfully, we may take a long time resisting it, we do not know for how long, in the process it may imprison people, it may kill people and so on. We are saying when we have re-established the Constitutional order, those people who suffered under that illegal government should be exonerated that they committed no offence, because by resisting it they would have been acting in accordance with this Constitution. And we should not forget what we provided for in Article 1, that the people are supreme, and they exercise their supremacy in accordance with this Constitution! All these articles should not be read in isolation, we must look at the whole. The Chapter is all about the Constitution; supremacy of the people; supremacy of the Constitution; and how people may resist anyone that may interfere with this Constitution which they have made. I, therefore, oppose the Amendment, it does not carry what we are saying. Thank you. *(Applause)*.

THE CHAIRMAN: I think Hon. Members, I will listen to one speaker and I put the question.

MR. OBUA OTOA (Erute County North): Thank you, Mr. Chairman. Mr. Chairman, I entirely agree with the Mover of the Motion; I support the Motion. The constitutionalising of violence is a dangerous thing but I would like to suggest that instead of deleting the entire paragraph 4, perhaps, if the movers could indulge me, maybe, it could form part (c) of Article 4, instead of suggesting that the whole of Article 4, be removed altogether. Because I think it is an elaboration of how the citizens of this country should be able to resist an illegal government or a government that comes to power by force of arms. If it is agreeable to the movers and to the Hon. Del-

egates in the House, there is no harm in inserting this Amendment as a sub-article in Article 4, namely, sub article 4 (c). I think there is some way we can accommodate the elaboration on how the citizens should resist and this accommodation could arise by simply including this as another sub-article. I thank you, Mr. Chairman.

THE CHAIRMAN: Now, there is a proposition from Hon. Otoa that we should amend the Motion. I do not see any enthusiasm on the part of the movers. Now, let me put the question. The proposed Amendment has been read out twice, so I do not have to repeat it. I will put the question.

(Question put and negatived)

THE CHAIRMAN: There is a series of Amendments. Hon. Kirenga, you had an Amendment, do you still insist - it seems you are not covered by the report of this Committee because you did not attend it. You see, we had agreed that the Amendments be synchronized.

MR. KIRENGA (Mityana County North): Mr. Chairman, the Amendment, actually, is not very material, it is a small one but it could have some implications. I wanted, with your permission, in Clause 4, Article 3, instead of saying 'all citizens' I wanted to say all persons in Uganda. Because, that is what appears in sub article 5, and it should be consistent.

THE CHAIRMAN: I think that one is a suggestion which the Technical Committee can look at, because it becomes really one of polishing up the Draft as they go on. I think we move on now to the Amendments on clauses 5, 6 and 7, by Hon. Elly Karuhanga and Hon. Wagira Moses. These are the cosponsors.

MR. KARUHANGA (Nyabushozi): Mr. Chairman, I move to delete Article 3, Clause 5. As it stands now, that article is a no offence article. It says that if you do all the above properly you will have committed no offence. That is basically what it is saying. It is saying do these things and then they put a legal requirements and you have not committed any offence. I am saying that it is really redundant, you do not have to say that. You have empowered to do what you are supposed to do and you do it, then what is the point of saying it, it is already constitutional. I do not want to waste a lot of your time, Mr. Chairman, and I beg to move.

AN HON. DELEGATE: Seconded.

MR. KOMAKEC: (Aruu County): Mr. Chairman, I rise to support the Amendment as proposed by Hon. Karuhanga because the Amendment will mean that the Constitution we write should be brief and to the point, and we should not repeat ourselves unnecessarily. Article 5, does nothing at all to what has gone before. It does not add anything substantial to either the understanding of the Constitution or the duties because Article 1 to 4 will have established the sovereignty of the people; the supremacy of the Constitution; and responsibilities of the citizen to do all to live by it and defend it and when they do that, obviously, they are not committing offence. So, it is superfluous, in fact, even the subsequent one will not mean much. So, I support it for the sense of brevity and the sense that it does not really give us any information. Thank you.

MR. NDEGE (Luuka County): Thank you, Mr. Chairman. I oppose the Amendment because what the article is saying is giving protection to a person who has resisted the suspension or overthrow of this Constitution. Therefore, it is giving legal protection to the person who is doing this resistance by any government which comes in later on. The right to being sovereign or as the person who has the supreme law, does not really reflect the fact that if anything goes wrong you have to put up a resistance. And if you put up such a resistance, the idea of 5, is that automatically under the Constitution, you have committed no offence. So, I think it should be there.

THE CHAIRMAN: Thank you, Hon. (Dr) Byaruhanga, I can see you also intend to move a similar Motion, are you merging so that we delete Clause 5: I do not see why we should attend to it twice.

DR. BYARUHANGA (Kitagwenda County): Thank you, Mr. Chairman. As you have rightly noted, I have similar Amendments to those of Hon. Karuhanga, but we disagree on one point. He wants to get rid of 5, 6 and 7, but I want us to retain 6. So, as far as 5, is concerned I support the Amendment because, first of all, it is superfluous and secondly it may be used by criminals who have been convicted of crimes during the illegal regime. These may come up and say they murdered and robbed as an act of war against the illegal regime. I know it has ever happened here, especially, during the times of Amin when people ran away with our money meant to

purchase drugs; people sold off some building abroad and returned as liberators, claiming that those acts were acts of war against the illegal regime. So, I support the Amendment, Mr. Chairman.

MR. CHEBET MAIKUT (Kween County): Thank you very much, Mr. Chairman. Mr. Chairman, Article 3, Clause 4 (a) and (b) which we have just agreed on seeks to give mandate to the citizens to struggle against all attempts or any attempt to overthrow the constitutional order. Therefore, in my opinion, I think it is prudent and necessary that the Clauses 5, 6 and 7 should be included because they provide a stress, i.e. it stresses the need for protection of the citizens who are involved in the fight against any illegal regimes. In other words, the Clauses 5, 6 and 7 provides for consequential safety for citizens involved in the resistance against constitutional overthrow. Therefore, the incentives for citizens who resist overthrow must be constitutionally provided for, otherwise citizens may find it difficult to wage resistance against any forces that may unconstitutionally overthrow the legitimate government of the day. It is, therefore, for this reasons, Mr. Chairman, that I strongly oppose the Motion moved by Hon. Karuhanga; and moreover under Clause 7, I do not think by implication in the earlier articles, that the courts of law may award any kind of damages or may absolve the punishment given to any person who has suffered as a result of resisting any illegitimate overthrow of a government. So, Mr. Chairman, I strongly oppose the Motion on those grounds.

THE CHAIRMAN: Now, Hon. Members, I think let me put the question.

(Question put and negatived)

THE CHAIRMAN: Hon. Karuhanga also has an Amendment on 6 and 7.

MR. KARUHANGA: Yes, Mr. Chairman. - *(Interruption)*-

THE CHAIRMAN: No, just a moment

MR. KIRENGA: Mr. Chairman, I want to draw attention to something which is consequential in Clause 5 of Article 3, by including the words 'or unlawfully amends', because it is not there although it was there.

THE CHAIRMAN: Is this by Hon. Nekyon? He is the expert on the Amendment.

MR. KIRENGA: Clause 5 would read: "Any person or group of persons who resists the suspension, overthrow, abrogation or unlawful amendment of this Constitution, commits no offence."

THE CHAIRMAN: I do not know whether it is consequential - the others were carried by specific votes. The only thing is that the Hon. Member is not in the Chamber right now. But Hon. Kirenga is moving, actually, on his behalf, that is how I will take it; and since it was discussed - *(Interruption)*.

MR. KARUHANGA: Point of information. Mr. Chairman, this was brought in the Legal Committee by Hon. Nekyon, but in the Legal Committee it was decided that the whole of 5, should be deleted, that is why I made the Amendment. Now, that it has stayed, I think we can as well go back to the original Amendment which Hon. Nekyon had moved so that we can have the words 'or amended' included now as a consequential Amendment.

THE CHAIRMAN: This one is just a question of consistency. Now, for our record can I put the question.

(Question put and agreed to.)

THE CHAIRMAN: Now, let us go on to Clause 6.

MR. KARUHANGA: Thank you, Mr. Chairman. Mr. Chairman, following what has just happened in Clause 5, I better defend my position much more seriously than I did in 5, because I had taken it that it was so obvious but it was not. In the previous meeting we had with the Legal Committee, I was convinced that this could easily come. The import of Clauses 6 and 7, can actually be read together. The idea here is that - *(Interruption)*.

THE CHAIRMAN: Are you moving that we insert the two together? They either fall or stand together?

MR. KARUHANGA: No, I think they should be treated separately, but the implication could be used in the argument for both cases. In Clause 6, Mr. Chairman, we are trying to say that a person referred to in Clause 5, the person who has done all the things to resist the change and the one who has restored the change has committed no offence. And then we go further to say that if he was punished - during the time when the other regime which was illegal - because of what he had done he should be absolved for all

liabilities arising from that punishment. Now, this is very good because it explains or tells a story, kind of saying that you have committed no offence but you were punished, but now that punishment is now absolved. It is like telling a story. Writing a Constitution is not story-telling. If you look at Clause 7. *The High Court shall on application-* (a) *by or on behalf of a person who has suffered any punishment or loss to which clause (6) of this article relates* will be compensated from the consolidated fund. Now, Mr. Chairman, I worry, and my worry is based on the new regime which you have restored, when it is confronted with these claims. With this, people will come - 17 million people, and say 'look, while it was bad in those days, those old bad days when those people were here, I was resisting, I was put in Luzira for raping and for - (Interjections) - yes, and I was convicted of certain crimes yes, I raped the Minister of Women in Development, I was active - (Laughter) I was resisting - (Interruption).

DR. KAZIBWE: Point of order. Mr. Chairman, is it in order for the Hon. Member on the Floor to come to this august House, while we are discussing a clause, to give duress to citizens of this country who would have been fighting oppression? Is it in order for him to bring his fantasies of wishing to rape the Minister of Women in Development (Laughter)? When he has been longing to do it and the Minister has been refusing. Is he in order, Mr. Chairman?

THE CHAIRMAN: Order, order. It is not necessary for the Chair to rule on this one, it would appear it was an open application and it has been openly rejected, and for us we shall proceed. (Laughter).

MR. KARUHANGA: Thank you for your ruling, Mr. Chairman. The Member from Kigulu South who also doubles as Minister for Women in - (Interruption).

THE CHAIRMAN: Could we go on to the Amendment please.

MR. KARUHANGA: Mr. Chairman, on a serious note, the people will be coming up to that new regime using a legal situation, putting in claims and asking not only to be absolved of the punishment, but they will then move to be compensated. Because once you have been absolved of that claim, you can ask some people who arrested you in Gulu - I understand that some of the former ministers are suing for Shs.300,000,000 after they were absolved of the

punishment or of the charge. Now, if one person can come up with that type of claim, and it is written and enshrined in our Constitution, where will the government get that money? Will we go to the World Bank to look for those funds? Secondly, where is the patriotism - yes, of this country? You do a thing, waiting to get arrested and then after you come - I would not mind writing it if it was just a story, but we are writing a law! We are saying that if this happens, whoever was involved with throwing stones or doing whatever for whatever reason - it is very difficult to establish a person's mind. You can never know whether that person was actually resisting or he was pursuing his own personal and selfish interests, or there was a coincidence of wants. It is important that Hon. Delegates when writing a constitutional piece to be used by courts, take care of the implication of what they write. There is no fund, in the consolidated fund, capable at all of meeting people who have participated in a revolution. Take, for example, the situation of people who went to Luwero only. Supposing they turned up to the new regime and said here we are, we have arrived. We want to be absolved of our responsibility and then you say, 'yes', and then they consequently say, 'Please, pay'. Where is the level of our patriotism going to come from in this country? What are we building in our Constitution? What are we inculcating among our people? Payment. I know that everybody should be paid for his labour but there is a limit to this extent - (Interruption).

MRS. MATEMBE: Point of order. I am raising a point of order, Mr. Chairman. We are on Clause 6, and I take it that once we are discussing a clause we discuss it on its own but the Hon. Member is mixing up clauses 6 and 7, and continues to discuss them together when the two are saying different things. Is he in order to continue mixing them up in that way - (Interjection) - No, each of them is on its own. That is why they are different. Is he in order, Mr. Chairman?

THE CHAIRMAN: The Chair allowed the Member to proceed because of his earlier statement that he will draw from the other the arguments in support of his submission on 6, now, unfortunately, the Hon. Member is now stressing No. 7 in relation to compensation, and I think he should come back and conclude his - (Interruption).

AN HON. DELEGATE: Point of clarification, Mr. Chairman. I seek guidance and clarification from the Chair. Mr. Chairman, whereas we should

be discussing clause by clause, there occurs a time in law when one clause affects the operation of the other, or when combined together they have a specific meaning. In light of this could Hon. Karuhanga now proceed as he was discussing both 6 and 7, because they are inter-related and they all relate to a given situation. Thank you, Mr. Chairman.

MR. KARUHANGA: Mr. Chairman, may I proceed?

THE CHAIRMAN: Yes, could you, anyway, be brief so that we..

MR. KARUHANGA: Yes, Mr. Chairman, let me just read the provisions of 6, aloud so that Members can understand what I am talking about so that they see the implication of how it is related to 7. *Where a person referred to in clause 5 of this article... that is Any person or group of persons who resists the suspension, overthrow or abrogation of this Constitution or Amendment commits no offence... is punished for any act done under that clause, the punishment shall, on restoration of this Constitution, be considered void from the time it was imposed and he shall be taken to be absolved from all liabilities arising out of the punishment.* Now, my point is a person who resists the suspension, that resistance cannot be determined and confined in law. You cannot define the methods of resisting; it is not legally definable. And having been punished, he will say I was punished for a crime I committed, I want it to be resolved, but in fact, I was resisting. He will come back after the restoration and consequently having then got that absolution he says now within my rights pay me. That is exactly what happens in 7, and in 7(a) they refer to 6. *The High Court shall, on application: (a) by or on behalf of a person who has suffered any punishment or loss... you see, ...award him or them reasonable compensation which shall be charged on the Consolidated Fund, in respect of any suffering or loss incurred as a result of the punishment.* Mr. Chairman, this is very good. Who would not like to be paid for this? But I am saying that you are writing the law! Where will you get the money?

THE CHAIRMAN: Okay, let us now handle clause 6, first.

MR. HASHAKA (Kibale County): Thank you very much, Mr. Chairman. I think, Mr. Chairman, Hon. Karuhanga is trying to play around, with words. I personally feel that sub clause 5, and sub

clause 6, are totally referring to that person who has totally resisted the abrogation of the Constitution. Then after that, I do not see why such a person again stands to be punished, when the Constitution he has been resisting to be abrogated is put in place. Because, I will take for example, some of the Luwero people have been compensated, though not all. But they have been compensated not with money from heaven, but from the Consolidated Fund. If somebody hacked and he does not hack himself or herself, and when he is actually hacked in the act of resisting somebody intending to abrogate the Constitution, and when such a fellow is defeated, the person who has been harmed, surely should be compensated. I think it is just a question of playing around with words, otherwise I do not see anything wrong with clause 6. I totally disagree with the mover, Hon. Karuhanga.

MR. MUSHEMEZA (Sheema County South): Thank you very much, Mr. Chairman. I support Hon. Karuhanga very strongly, because of two reasons. One, if clause 6 remains as how it is, it undermines the patriotism of citizens as this will make citizens always to think in terms of being paid. Secondly, I believe that if we pass clause 6 as it is in the Draft Constitution, definitely it will call clause 7 to support it. So, you cannot say that they are not related. So, Mr. Chairman *(Interjection)*- protect me.

THE CHAIRMAN: Could you confine yourself to clause 6, please.

MR. HASHAKA: So, I am saying, Mr. Chairman, that Mr. Karuhanga is correct because that clause will not be in the interest of the country. Thank you, Mr. Chairman.

MR. SAKWA (Bungokho South): Thank you very much, Mr. Chairman. I speak to oppose the proposed Amendment deleting clause 6. Whereas I am not sympathetic with the idea of compensating people who carry out a patriotic duty, I think it is only logical to protect them if they are illegally punished, and if we have agreed that they commit no offence in clause 5, we are further qualifying clause 5 by saying that should anybody impose illegal punishment to them, then at the end of this illegal authority, they should have the freedom they had before. We are not really asking for compensation under clause 6, and therefore, I support that clause 6 remain part of the Constitution, and therefore, Mr. Chairman, I oppose the Amendment. Thank you.

MAJ. TUMUKUNDE (Rubabo County): Mr. Chairman, I believe that these sections and these clauses are motivated by the history of Uganda. We know very well that people have feared to resist government simply because sometimes they fear the law, or at least they are not protected by the law. In that regard, therefore, Mr. Chairman, I do suggest that clause 6 remains as it is in order to help an ordinary citizen to be supported and be given energy to try and resist a government that has imposed itself on the people and to know that even if he has been punished there is a way he will be absolved or redressed. One thing, Mr. Chairman, which I oppose is doing it for cash. That one does not sound reasonable. Thank you, Mr. Chairman.

DR. RUHAKANA RUGUNDA (Kabale Municipality): Thank you very much, Mr. Chairman. I also oppose the Amendment proposed by Hon. Karuhanga. Hon. Karuhanga tried to confuse us by using the arguments of clause 7 to put the case for clause 6. Mr. Chairman, it is crucial for us to be able to recognise patriotic contributions, and to make sure that the patriots that may have been either imprisoned or punished because of resisting anti-people and dictatorial regimes are freed when the people seize power. Unless we make sure that this clause passes, we may end up after liberation keeping in prison people who resisted dictatorship. It is necessary to absolve them and to clearly tell the country that these may have been punished, they were in prison but the cause they were fighting for was a just cause and, therefore, we are giving them due recognition. The question of compensation is coming in clause 7, we will look at it, but we should not confuse clause 7 with clause 6. Mr. Chairman, I oppose the Amendment. I thank you.

MRS. MATEMBE (Women Representative - Mbarara): Mr. Chairman, I wish to strongly oppose Hon. Karuhanga's Amendment, and I wish to say that clause 6 and clause 7 are completely different. Clause 6 is exonerating people whom we have given powers to act in clause 5, should they have acted during that time, and our Constitution is reinstated, they should be exonerated from any crime or any wrong, or be freed from any punishment they would be serving during that wrong government. For instance, Mr. Chairman, a person may have been arrested in accordance with the acts in clause 4 and 5 and then he is convicted by a court of law but wrongly and he is serving a sentence. All we are saying is that once our constitution is reinstated, not

only should that person be released if he is in prison but the conviction should also be quashed; and should he be under a responsibility to pay certain damages or something, all those liabilities should stop, because they will have been on him or her wrongly! That is all we are saying. When we come to compensation, we shall discuss it accordingly, but this one must remain to protect and exonerate those people who will have acted. I thank you, Mr. Chairman.

DR. KAKUNGULU (Presidential Nominee): Thank you, Mr. Chairman. I stand to support the Motion as put by Mr. Karuhanga. We have only been looking at the aspect of someone being in prison and subsequently change of government and they reinstate the Constitution that was abrogated. But here is a historical fact. During the regime of Idi Amin, most of the people who resisted were not put in prison, but they were killed. The punishment they were given was death! Now, if the change of the regime in 1979, did not bring the punishment to be void because it had already been carried out, so it was not be void. And there is no provision for somebody who has been punished by death being compensated. So, we should not only look at one side of it that is, on people in prison. I thank you, Mr. Chairman.

MR. OGOLA (West Budama South): Thank you very much, Mr. Chairman. I rise, Mr. Chairman, to support strongly this Amendment moved by Hon. Elly Karuhanga. Mr. Chairman, when I first spoke during the general debate, I feared that this House might make the mistake to wish to make a Constitution which has eyes to see. This would be unfortunate. A law must be blind and I fear that there are some Hon. delegates who are supporting a position just because they themselves may have had an experience which they want to have exonerated under the law. Yet I feel that the Amendment by Hon. Elly Karuhanga is an objective Amendment. It is not pretending that there is no government which will not have people resisting it. Now, if you have this kind of provision, it means that when one government is overthrown by force, during that resistance that government would be putting the resisters into prison. When the resisters win they come out and they will put those people who had been in government back to prison while they get out to compensate themselves; and then these ones, this time, will work to resist, because resistance is a natural tendency in the society. It is not going to stop. Now, if you are going to attract resistance by giving it reward, then

you might as well begin to arrange how to punish it, and hence reward and punishment will become institutional and others here may want it to become haphazardly applied. Mr. Chairman, this is joking with words. These are pretenses. These are situations where somebody wants to look at himself like a pharisee and says I did it and I am better than the other one, and that is not good for our country. We must reject that clause; we must support Hon. Elly Karuhanga for objectivity's sake. Thank you.

AN HON. DELEGATE: Thank you very much, Mr. Chairman. I am very much opposed to the Amendment for the following reasons: This compensation you are talking of, that is worrying you - you do not go to war hoping to come back alive. Here I am talking about a situation of the boys, for instance, that have recently been retrenched. We picked them from Secondary schools, Primary schools and High schools and now they have been retrenched. These could have succeeded in their studies. Now, they have gone home. They do not have land; they do not have homes because they wanted to give you this freedom and you think you are justified to deny them shelter, home, education. Because they wanted to free you - *(Interruption)*.

THE CHAIRMAN: Hon. Member, you are talking about a different article.

AN HON. DELEGATE: No, because they are also confusing articles. We are discussing 5, 6 and they are talking of 7.

THE CHAIRMAN: No, no, we are talking about clause 6. Now, Hon. Members I can see the enthusiasm we have for this article - *(Interruption)*

MR. MIYINGO-KEZIMBIRA (Bukoto Mid-West): Mr. Chairman, unless we get very definite on the procedure that we deal with clause 6 and leave clause 7 alone to be tackled separately, we shall just get confused. Because - *(Interruption)*.

THE CHAIRMAN: That is what I have just told the Hon. Member who left the Floor. I told him that we are dealing with clause 6, and he did leave the Floor. I will have one Speaker and we wind up the debate on this one.

LT. COL. KIIZA BESIGYE (NRA Delegate): Thank you, Mr. Chairman. I am personally just seeking clarification on clause 6. I am obviously very

sympathetic and I support the clause as it is, seeking to absolve people who have struggled to reinstate the Constitution from punishment but my worry is how that can be done. Because during the struggle, there will be a lot of crimes committed, some genuinely in the cause of the struggle, others in pursuit of personal interests or in the interest of the struggle. I do not know whether all the people who will be serving sentences will be subject to re-file after the reinstatement of the constitution. All crimes which would have taken place during the time the constitution has been suspended, abrogated or whatever - all those crimes which were constituted will they be reviewed with a view to absolving those who would have been unfairly convicted or will it be only the person appealing against his conviction or punishment on an individual basis? I am seeking for clarification on how it will be done, to treat people who have been punished during that period. Because it can open a Pandora's box which we may never close.

THE CHAIRMAN: No, I think here, Hon. Member if one is reading sub clause 6 in light of sub clause 5, you are looking at punishments imposed by a judicial system in respect of crimes arising from the exercise of the power, right and obligations, it does not apply to a person who goes and steals cows for his own use against some other person. It is much narrower.

AN HON. DELEGATE: Mr. Chairman, what we are talking about is arising out of sub clause 5, while sub clause 5 is arising out of 4. These are people who are resisting any person or group of persons, even seeking for overthrow. They are not talking about stealing cows. During the struggle of NRA, we did take cows from all sorts of people for the pursuit of the war. At the same time, the Karimojong stealing cows were cow robbers who may have been convicted during that time. Now, will they appeal as individuals that they were stealing those cows or assisting the effort of the struggle? Will those cases which we have arising out of that also - *(Interruption)*-

THE CHAIRMAN: I do not think the matter was as serious as that, even the case you give of taking cows to Luwero during the time of the struggle. But if a Karimojong comes to Kapchorwa and takes cows, I do not see how he can come out later and say that, he took cows from Kapchorwa for the sake of the revolution. So, if he was convicted in Namalu, his punishment continues regardless of the change.

But in the case where the cows were taken in Luwero and someone was caught transporting the cows on behalf of the Resistance Movement, and he was convicted of stealing those cows, then number six would apply to this person and so on. Yes, I think we should really wind up on this one. We are not adding anything new as far as I am concerned. Let us vote on sub clause (6). Sub clause (6) is clearly there, it is moved by Hon. Karuhanga that it should be deleted.

(Question put and negatived)

THE CHAIRMAN: Now, I give the Floor to Hon. Karuhanga in respect of sub clause 7.

MR. KARUHANGA: Now, Mr. Chairman, on sub clause 7, we have *-(Interruption)-*

THE CHAIRMAN: Hon. Member, before you go to seven. There was hon. Byaruhanga with an amendment on six. I do not know why these were not merged. It should have been better for the Hon. Member to move an amendment, so that we dispose of this amendment. If it is carried then, number six could have been amended. Now, we have done six and rejected the proposal to remove it. Hon. Dr. Byaruhanga is suggesting that he wants to make an amendment on six. Do you still want to?

DR. BYARUHANGA: I want to withdraw my amendment.

THE CHAIRMAN: Okay, Hon. Byaruhanga.

DR. BYARUHANGA: Thank you, Mr. Chairman. My proposed amendment was in anticipation of sub clause (5) being deleted. Now that it is not, I wish to withdraw my amendment. Thank you.

THE CHAIRMAN: Thank you. Now, Hon. Elly Karuhanga you are on the Floor in respect of sub clause 7.

MR. KARUHANGA: Mr. Chairman, before I go to seven, because we have passed six and I had not expected that. I have another problem on six which I would like with your permission to raise and just get clarification. Now, we have passed this as it is. But actually who is going to decide that, the punishment is absolved. If you read it carefully, the court has nothing to do with it.

THE CHAIRMAN: But I think what this clause is - if I may also see how I understand it. For instance, when you are convicted of an offence, your record should read that, he was found guilty of an offence and convicted and therefore, you go around with that - until death do you part on this earth. But what this one is saying, regardless of what the court had imposed, be it custodial punishment, a fine or other disability, they automatically by virtue of this provision, seize to be part of your record. So, this is part of your record, you do not have to go to court. It is by the operation of those provisions that you seize to be considered a criminal. In this case, you cannot be a cattle rustler from that time. Automatically you are absolved, or if you have been hanged, your children can never say that our father was a thief.

PROF. SENTENZA KAJUBI: Point of information, Mr. Chairman, I would like to inform the House through you, Sir, that there is an honourable qualification which is given to people who have been freedom fighters. And we call them, prison graduates. So, I think this constitution will be concurring that qualification, because people are so punished for resisting the breaking of the constitution. And I think that, when freedom is re-established, it will not be necessary to go to court for the court to know whether somebody is absolved or not. The constitution is doing it. If you were sent to prison because of resisting the abrogation of the constitution, you are automatically absolved immediately it is reinstated and you are prison graduate, or whatever the case might be. Thank you.

THE CHAIRMAN: I think let us not continue. Can we ask Hon. Karuhanga to at seven? I take it that, we are determined to finish Chapter One.

MR. KARUHANGA: I have an amendment to delete the whole of sub clause (7).

THE CHAIRMAN: Point of order?

PROF. KANYEIHAMBA: Point of order. I raise on a point of order. Is it in order for Hon. Karuhanga having lamented that sub clause (6) does not provide a method of who is entitled to compensation, to adding sub clause (7), and trying to take away that very method. Is he in order?

THE CHAIRMAN: I thought he said that the two are not linked. So, he is entitled to proceed in that manner. Please go ahead.

MR. KARUHANGA: Now, Mr. Chairman, I would like to make another attempt to delete sub article (7). Mr. Chairman, there is an application to the High Court that you are punished or your legal successors, can come to the consolidated fund, and pick some money and go home. Now, this is all in the name of Resistance. Really, have we talked about this matter deeply? Can we reflect and find out! Do we go to the World Bank if the money is not there and borrow money for people doing their duty? I know that, in article 253(5) anybody who is wronged by court can come to court and be compensated for imprisonment. It is a human right. I know that. It is taken care of in that one. But it is entrenched again in sub article (7). I do not know what you are after. Mr. Chairman, I finish my contribution on this also.

THE CHAIRMAN: Okay. What is your procedure?

MR WAGIRA: Thank you, Mr. Chairman. With due respect to the Chair, may I please remind the Chair that, I was a co-author of this and originally, my intention was to move an amendment to delete seven. But on the recommendation of the Legal and Drafting Committee, we were told to merge. As a point of procedure, Mr. Chairman, may I implore the Chair, to allow me as a seconder in this particular Clause of the Motion, to say something.

THE CHAIRMAN: You are not a seconder, you are cosponsor.

MR WAGIRA: I am a cosponsor. Sorry.

THE CHAIRMAN: I will give you a chance. I can give Hon. Nekyon - It does not really make a difference. Let the Hon. Member for Kalungu speak first. I have given him the Floor. And then we shall proceed. I will come to you and then hear from the few Members.

MR. KINTU MUSOKE:(Kalungu East): Mr. Chairman, thank you. I am in agreement with sub clause 6, which we have just passed, and whereas Clause 7, appears to be desirable from the practical point of view, it is impossible to compensate everybody who contributes in a struggle. And therefore, I do not want us to put into the constitution things which we cannot fulfill or implement. In our spheres some of us have had to deal with questions of people who have contributed in the struggle and coming up with claims counter claims. It is true that it is

impossible for us to implement sub clause (7). And therefore, I would support Karuhanga's submission that it be deleted, altogether.

MR. WAGIRA: Thank you, Mr. Chairman. As I said, this amendment constitutes an amendment I had already circulated to the House. Mr. Chairman, it is with reluctance that I raise to express disapprobation on this particular article, a proposal for which we are very much obliged to those heroes of Uganda past and present; even future who stand to lose immeasurably in defence of the constitution. From the start, Mr. Chairman, I have personally born a good will to this article in general, and wished it well. However, in this particular clause, I happen to differ much as my opinion may appear exhibit a high sense of ingratitude on these patriots, it is from a sense of persuasion, that it is right for me to do so, and from a sense of duty that I hazard it.

Mr. Chairman, let me preface the grounds of my proposed amendment in this way: That there are two passions which have a powerful influence in the affairs of men, these are ambition and avarice; the love for power and the love for money respectively. Separately, each of these has a great force in prompting men into actions. But when united, that is the love for money and power; united in view of the same object they have in them, in many minds the most violent effects. Place before the eyes of people, Mr. Chairman, an adventure, that has in it prospects of power and monetary gain at the same time, and they will move heaven and earth to start and accomplish that feat. And what kind of people will strive for this profitable adventure, through all the heat, contention and risk, I dare say, Mr. Chairman, it will not be the wise, prudent, moderate, selfless, and lovers of peace and good order. The men fit for managing the affairs of a country. To the contrary, Mr. Chairman, it will be the bold, adventurous, violent people, those with strong passions, indefatigable activity in pursuit of their selfish goals. If their adventure succeeds, then there will also be those aspiring for the same, thus dragging a country into a perpetual vicious circle of endless civil wars which are catastrophic and fruitless as they are, at most times. Mr. Chairman, I had some reservations: I am reluctant to endorse a clause that seeks to pay a citizen of Uganda for undertaking a patriotic duty; moreover imposed upon him or her by Clause 4 of article 3 Chapter I of the Draft Constitution. The Clause that rises my eye brows namely Clause seven of Article 3, undermines Clause 4 by making the

defence of the Constitution an adventure with prospects of landing into fortune, at the successful accomplishment of the feat. To this end, it is my resolute opinion, that a constitution should not be a tool to reward combatants, but was a weapon to bring patriotism and nationalism in the citizens of a country. If we are to go by Clause 7, we should be creating assemblage to a situation, where a man asks to be paid for chasing away another man whom he found raping his wife. What payment if may one ask, did we give to those who fought for our independence?

Mr. Chairman, even if the moral arguments were not sufficient to warrant a deletion of the Clause, there are the economic aspects to it. How rich is Uganda, and how big is our consolidated fund? Mr. Chairman, as a peasant, I will talk on behalf of my peasants in Kibuku. That when a war is fought, when a resistance is lodged, everybody sacrifices, including your peasant. To tax a peasant, to compensate another Ugandan, is actually double jeopardy on part of the peasant. It is actually one way, of taxing a peasant in addition to the sacrifice he made.

Mr. Chairman, as I conclude, I would like to say that, we put in the constitution, matters that are constitutional and leave the rest to subsidiary legislation. Mr. Chairman, let us guard against putting in the constitution things that will not be enforced. Heads of families know very well, the catastrophe in setting a law that will not work. Let us not run into the risk of turning a Constitutional Court into a Claims Office. I thank you, Mr. Chairman, and I beg to Move.

DR. NAKYANZI (Ntenjeru County): Mr. Chairman, I would like to support the amendment in that, if one is to go and defend the constitution, it should not be in the hope of gaining materially. And I think if we accept this article, including Clause 7 in the constitution, it will put a wrong precedence in Uganda. You will find people coming up to stage all forms of rebellions in the hope of gaining something in the future. So, what I would suggest is that, actually, we remain with article 6, as it is: to make it our duty to defend this constitution without fear of victimisation of those trying to defend a constitution, but delete Clause 7. Thank you.

MR. ETYANG (Tororo County): Thank you very much, Mr. Chairman. Mr. Chairman, clause 6, had elements that convinced us to make that proposal.

We are now getting into a detail which, as somebody has said will be to open the Pandora box. The question therefore, called for by Clause 7, is the principle of compensation. Mr. Chairman, I think this assembly has been told that, they are speaking from the experience of our independence, and that is why we have adopted clauses 4, 5 and 6. I would perhaps at this point, Mr. Chairman, before we rush into deciding one way or the other on clause 7, that perhaps we seek legal advice from the experience of the courts, in respect to compensation. Here, I would come out with something which is practical, something which can be on a sustainable basis, our national purse will be able to support. Mr. Chairman, if we pass this as it is now, and as I see it, it is mandatory, the High Court shall only on application to it proceed as follows: either in respect of the persons aggrieved or on behalf of such persons, to proceed to award damages. Mr. Chairman, I do not think it is the intention that, we open the Pandora box and I would really like to plead with my colleagues that, as all of us are speaking from experience, we also have a future. Now, what is the legal and financial experience of our courts in this respect? This is the one article that I would refer to a financial expert to examine and advice on its implications. Otherwise, I would intend to think that once somebody has been verified as per Clause 6, he can then perhaps file a civil suit, to claim damages accordingly, where appropriate. Thank you.

THE CHAIRMAN: Member for Kalaki, you have been putting up your hand for a long time.

MR. ELYAU (Kalaki Soroti): Thank you, Mr. Chairman. I am seeking for clarification. We are talking for those who are going to fight. Here, recently, we had people talking that, during the NRM fighting, they took people's cows. Now, in that struggle, definitely some property would have been taken to help the rebellion, to regain what we call New Freedom. Now, why don't we provide for those innocent people who will have lost the animals or the properties in the process? Yes, we should always seek protection because this Floor is now protecting a constitution, and a constitution for the people. So, we should be clarified whether these people whose property was being taken will be compensated, and there must be a tool to ensure that, that thing is there.

THE CHAIRMAN: Hon. Member, are you surrendering your chance?

AN HON. DELEGATE: Thank you very much, Mr. Chairman. I stand to oppose this Motion on the basis that the idea of monetary compensation is a bit difficult to implement, as stated by Hon. Karuhanga. As the country may not be financially sound to do so. Secondly, I also see that, during the struggle, a number of people may suffer. This could be psychological, moral and physical. I find it a bit difficult to try and compensate somebody who has suffered morally. How do we determine the degree of this moral or psychological suffering, so that we can compensate this person monetarily. So, Mr. Chairman, I therefore, support that, article 7, be deleted from the Draft Constitution. Thank you.

MISS. BYANYIMA (Mbarara Municipality): Thank you, Mr. Chairman. Mr. Chairman, I support the amendment of Hon. Karuhanga. The pain law that we go through resisting dictatorship and un-constitutionalism can be compared to the pain that a nation goes through to be born. It is also like a mother giving birth to a child. Neither do you compensate a child who cries when it is born for being born. Mr. Chairman, I think that you put the question, and I hope that we shall support the Motion.

MR. MULINDWA (Bukoto West): Mr. Chairman, I rise to oppose this Motion very strongly. The impression which has been created in the House is that, we are going to compensate all people who have been suffering. But when we look very critically at article (7), we are compensating those people who have been punished. There is a difference. The impression that whoever will resist or suffer in resisting will be compensated, not at all. But here we are specifically saying that people who have been punished according to law, because they are resisting the overthrow of the constitution. So, those people will be compensated. I want to request members to look again at this article in view of this contribution. Thank you, Mr. Chairman.

MR. MUKWAYA (Busiro County, East): Thank you, Mr. Chairman. Mr. Chairman, I stand to support the amendment. Mr. Chairman, it is important that when we make a constitution like this one, we also seek a spirit of nationalism and patriotism. And if you are going to attach this to material gains, then the whole thing loses meaning. The fear of Hon. Mulindwa that we are going to compensate very many people, because they have all resisted, as was in Luwero, is I think not calculated. My view is that, we should support this amendment, and that who-

ever is actually resisting as a duty to defend the constitution, should be compensated. And if one dies in the course of resistance, one dies a hero; if you survive, he also survives as a hero. So, Mr. Chairman, I strongly support this amendment. Thank you.

MR. BAGENA (Bufumbira East): I have been persuaded by the idea of compensation. But it is terrible to think that people are going to be compensated at the expense of innocent citizens who may have contributed as much to the struggle. Therefore, I would like to support the Motion, that no compensation is going to be given at the expense of the public consolidated funds. And I move that you put the question, Mr. Chairman.

THE CHAIRMAN: The Chair is reluctant to let someone make his views and then close other people's mouths. So, let us hear from Hon. Atwoki, and then we can proceed to put the question.

MR. ATWOKI (Youth Northern Region): Thank you, Mr. Chairman. I want to support the Motion that this article do stand part of the constitution. Because one aspect of the Motion is that, it should be deleted.

THE CHAIRMAN: Are you supporting the deletion of that clause, or are you opposing the deletion?

MR. ATWOKI: I oppose the deletion of that clause. For reasons which are very simple. When people join a struggle, they do not go into the struggle. *-(interruption)-*

THE CHAIRMAN: Order, order. Go on, I am protecting you.

MR. ATWOKI: I was saying that, I oppose the deletion because, when people go for a struggle - not all the 17 million Ugandans go for the struggle - it is a few people who go to the struggle and upon their sacrifice. So, as Hon. Kiiza Besigye was saying, it is not that everybody's property that is taken during the struggle. There are certain people who, unfortunately, their properties are taken and such people, I believe, are the ones, on application, to be compensated. Because the circumstance during the struggle is such that, it is dictated that their properties be taken even if it was against their will. So, they have to be compensated. Thank you.

THE CHAIRMAN: You cannot contribute on whether or not you accept before we even put in form of a Motion. The point is that, we gave them three items, this one plus what would be left of three, to see how or whether it can be reformed or it has to be disbanded wholly. And then three was that, we said that when amendments come they stand referred to the Legal and Drafting Committee. Those were the three jobs we gave them. But we referred the specific ones and then we said for subsequent and for the future. Now, I think at this stage, let us call upon Hon. Ruzindana, if he agrees with his recommendation.

AN HON MEMBER: Thank you, Mr. Chairman. On the rest of Chapter 3, you gave us seven days to report to you, and they are not yet over.

THE CHAIRMAN: Okay. Now, I would like to suggest that Hon. Ruzindana goes ahead, and then we shall speak in a disciplined manner, based on this Motion, if he does agree to Move. Hon. Ruzindana you have the Floor.

MR. RUZINDANA: Thank you, Mr. Chairman. I would like to thank the Members of the Legal and Drafting Committee for having introduced this report and for having supported my amendment which originally wanted to seek Article 8(1,2,3) to Article One of the constitution. And the committee has supported my amendment. I therefore, agree, these are the proposals, as they have reported. I also further agree with their proposal to move sub article 9(2) to article one of the constitution, and I would like to move an amendment to that effect.

THE CHAIRMAN: The question now, let me propose it. The question is that, article 1 be amended. You see, we had settled it. But we are now just amending it. So, they reserve the right to revisit. They amended by adding thereto clauses mainly 2,3, and 4, as per the report of the Legal and Drafting Committee. That is the question. The rest will be done by the Technical Committee, but that is the question. I think it was seconded, was it not? Okay, it was seconded. It was seconded by Hon. Wanendeya and many others. Now, I do not see any desire to really debate this one, shall I put the question?

(Question put and agreed to)

THE CHAIRMAN: Now, article (1) is amended. So, we wrap it and make it a final thing. I want to put the question. That article (1) as amended do stand part of the Draft Constitution.

(Question on the amendment agreed to)

THE CHAIRMAN: So, our new article has got Clauses 1, 2, 3, and 4. We should thank the Legal and Drafting Committee for doing a good job. Now, we come to Article 3. We have gone through it, and we have approved most of it, except that we have deleted 7. Now, I put the question, that article 3, as amended do stand part of the constitution of the Draft constitution.

(Question on the amendment agreed to)

THE CHAIRMAN: Hon. Members we have completed one Chapter. The rules do not require us to put the Chapter. Our rules do not know the Chapters, our rules are only knowledgeable about articles.

AN HON. DELEGATE: Point of information, Mr. Chairman, according to the order paper, there is an amendment including a new article - article 4, on promotion of Public awareness of the constitution. And should be part of -

THE CHAIRMAN: Oh yes, there is a proposed amendment by Hon. Okulo Epak and Hon. Rwabiita. Yes, I think the Chair had not seen properly, it is a proposal to add a new article 4. I think you have the amending sheet. The proposed article is in relation to promoting public awareness of the constitution, and let me ask the Movers to Move the Motion. Hon. Rwabiita.

MR. RWABIITA: Thank you, Mr. Chairman. Mr. Chairman, when we met the Legal and Drafting committee, Hon. Dr. Okulo Epak and myself had similar amendments on this point and we agreed to synchronize them into one article. Mr. Chairman, the article is intended to disseminate information on the constitution that we shall make. And I think it is an important article. Because it says that, *'public awareness of this constitution shall be promoted widely -*

(a) by translating it into the Ugandan Languages that is local languages, and disseminating it as widely as possible. And (b) by the provisions of the constitution, being taught in all educational and armed forces training institutions and by the

regular transmission and publications of programmes by radio, television and the media generally. Mr. Chairman, I beg to move that this article be included in the constitution, and it has been supported by Hon. Okulo Epak, and these are our reasons, Mr. Chairman.

THE CHAIRMAN: Hon. Okulo Epak was a cosponsor. Okay, go ahead.

MR. RWABIITA: Thank you very much, Mr. Chairman. Mr. Chairman, this closes up nicely Chapter (1). Because after establishing the principles of power of the people; the supremacy of the constitution and how it should be defended and whatever we shall pass in this constitution, it is in order that people are informed or they are educated about the principles of this constitution.

THE CHAIRMAN: Procedure? Yes.

AN HON. DELEGATE: Mr. Chairman, I notice that, the proposed article has two sub articles (a) and (b), procedurally, it is not be proper if we discussed 4(a) first without going to (4)(b).

THE CHAIRMAN: Even if it had one and two, but when you look at the substance, it will relate to more or less the same thing. But when he has closed, we shall then come down to (a) and (b), and you can make a presentation.

AN HON. DELEGATE: Thank you very much, Mr. Chairman. Mr. Chairman, ignorance of provisions of our constitution has led people to be passive, whenever the constitutions are overthrown. Mr. Chairman, it is well known in Uganda, that people never knew what was enshrined in the constitutions. This was only a monopoly of the lawyers, the learned men and women, in the course of law. But as you know, Hon. Members, in developed countries like United States, Europe, etc., constitutions are taught in all schools. Some of the important articles are even recited every morning so that the generations come up knowing what a constitution stands for, and how their human rights will be protected. Mr. Chairman, in Uganda, if you take the problem of the human rights, for many governments, these rights have been kept silent although they have been in the books of law and in the constitution, their human rights have been silent. Now, we are saying that let us teach our women, our children, our disabled to know their human rights and practice

them. We are saying, Mr. Chairman, the workers have got to know their rights and responsibilities. Mr. Chairman, how shall the people know their sovereignty? How will they know the supremacy of the constitution? How will they know how to defend it unless they are informed about it? Mr. Chairman, how many of us had access to the constitution until we got interested in politics? Mr. Chairman, many of us here have just got interested in the constitution but through our education system in Primary, Secondary, and University, we never looked in these books. Therefore, it has been unfortunate that we have been protected by the law that we do not understand. So, for these reasons, Mr. Chairman, we are suggesting that the principles of this constitution be widely promoted by translating it in our local languages so that we can teach it in our schools; the RCs or any councils can teach it to the people and in particular, the Armed Forces, the Police, and the Prisons should know the details of this constitution so that they do not misuse the constitution to overthrow governments. Mr. Chairman, the publicity of the constitution by the Press especially now that we are in CA, has been very useful to us and the public. So the media, the Radio, Television should publish some of the important articles of this constitution so that the people know the supreme law that governs them. Mr. Chairman, I beg to move.

MR. BASOGA NSAJU: Mr. Chairman, I beg to oppose this motion very, very strongly but I do agree that the motives are well intentioned only that I am surprised they have been moved by an Hon. Member who also doubles and sits in the NRC. What he has submitted here is really a matter of policy and administration. It does not really have to be part of this constitution because even if we finally want to put it there you cannot sue Television for refusing to put there a particular programme on a particular day generally or a particular newspaper for refusing to carry chapters of this constitution. So, really what he is proposing is blood and I have heard it in another fora in the NRC being advocated for. I think what the present Parliament can do or what the future Parliament will do, is to carry out appropriate legislation so that it is enshrined within perhaps the policies of the Ministry of Education or some policies within the Ministry of Information. So, I suggest that this one really should not bother us here but Parliament at an appropriate time will make good laws that will promote the public awareness of this constitution. Thank you very much. I oppose it very, very seriously.

MR. ATAMUAKU ZUBAIRI: Mr. Chairman, I beg to support the motion. Mr. Chairman, I am sure all of us are aware that the need to keep the citizens aware and knowledgeable about the constitution has always been acceptable policy. The policy makers and policy implementers have always found it easy to pronounce and yet not failed to ignore such a duty. It is therefore important that the need to make the public aware of the constitution should be constitutionalised such that policy makers, policy implementers and everybody will be kept aware that there is an obligation to disseminate information and knowledge regarding the constitution. If we do not make that obligation quite clear, we simply leave it as a policy matter, then in future, whoever will be in power for his/her own interest will continue with the present situation whereby people are kept unaware of the fundamentals of the laws by which they should govern themselves. Mr. Chairman, I therefore submit that since it is not only a right but also a duty of those running this country, of those wishing well for this country, to keep the population aware of whatever obtains in this country, whether in terms of politics or otherwise, then it is imperative that that particular fact should be given a legal backing. I beg to support.

DR. ODUR DICK: Thank you, Mr. Chairman. Mr. Chairman, we have just empowered our people to defend the constitution. But how do you defend what you do not know? I think it is only imperative that we make it abundantly clear to the authorities that our new constitution should receive the widest publication possible and I would like to support the motion that we make it available to our people and we make it available to the media. We should do everything possible to teach the constitution in our institutions so that when we call upon the citizens to defend it, they know what they are defending. Secondly, in Uganda, I am sure you are aware that we lack the culture of constitutionalism. Now, how are we going to build this culture? How are we going to develop it? We can only develop it if we make the contents of our constitution known to the population. Thank you very much, Mr. Chairman.

MISS KABIRISI LUBERENGA: Thank you, Mr. Chairman. In clause 4 (a) article (3) of chapter I we have just charged the citizen of this country with the duty to defend this constitution. Now, how are they going to defend something that they do not know? I would like therefore to support the motion because I do not believe in what Hon. Basoga Nsaju

has just said that this is a policy matter. I say, it is my understanding that the constitution guides policy. Therefore, we should not leave this chance to rulers who might not care what happens to the constitution of this country. So, let us please adopt what has been proposed and we make it compulsory and indeed it is imperative that we give the citizens the knowledge so that when we charge them with the duty to defend, and they know exactly what it is they are defending. I therefore, beg to support, Mr. Chairman.

MR. KAHEEBWA: Mr. Chairman, I support the motion for the simple reason that if we want all Ugandans to defend this constitution, they have to know what they are defending and this must be constitutional. I beg the question to be put, Mr. Chairman.

AN HON. DELEGATE: Mr. Chairman, I support this amendment. I am a Member of NRC, but you will be surprised. Mr. Chairman, how many Members have internalised even the past constitutions? There is general absence or awareness on the constitution. During campaigns, I discovered that even people you expect to know about the constitution, do not know. I support this amendment because it is making it mandatory to the policy makers that they have first of all, to interpret or to translate the constitution into local languages. One of the reasons why African constitutions are not understood is that they are normally made in foreign languages and by the way, politicians deliberately keep the population ignorant of the constitution. They deliberately keep the population uninformed so that the population does not demand for what is in the constitution. So, I strongly support this provision and we should make it incumbent on policy makers and the government of the day that they have to undertake this exercise to make the people aware of the constitution. Thank you.

MR. ISAAC MUSUMBA (Buzaaya County): Thank you very much, Mr. Chairman. Mr. Chairman, I agree with the principle that something must be put into the constitution about government having a duty to effect public awareness of the constitution. I, however, do not agree with the way this particular section has been drafted. So Mr. Chairman, I seek guidance here on how to proceed.

MR. MUSOBYA: Thank you, Mr. Chairman. I am speaking in support of the motion just because the successive governments in Uganda have ex-

exploited the ignorance of the people as far as the constitution is concerned to put them into untold suffering. I suggest that the majority of Ugandans cannot go to the educational institutions. So, I suggest that the masses should be included in the amendment so that seminars can be conducted to the grassroots. The only key to open the door for the people of Uganda to understand and appreciate and even have a sense of belonging to the constitution is to teach them so that they can understand it and manage to defend it. So, I do not agree with Hon. Basoga that this should be legislated in Parliament because Parliaments have existed for long but they have not tried to do it. So, I beg to support the motion.

DR. MUSEKURA NDARUHUTSE B. T. (Bufumbira North): I am standing to support the motion, Mr. Chairman, because we have been suffering in the past just simply because the majority of Ugandans were ignorant of the constitution. And if we are to learn from past mistakes, that mistake should not be repeated. Mr. Chairman, it is very important that all Ugandans should know their rights and obligation and they should know the supremacy of the constitution. The constitution should be taught in all schools and educational institutions. Needless to say Mr. Chairman that it must be translated in all local languages including the so called minor languages, such as Rufumbira, so that all Ugandans study and know the constitution and take it very seriously. We do not want those in power, Mr. Chairman, to keep people in ignorance of the constitution because as you know, policies can change but the people should know the constitution and be ready to defend it. The Army, Police and everybody must be aware of their constitutional obligations so that they are not manipulated because of ignorance of the constitution. Thank you very much, Mr. Chairman.

MR. KARUHANGA: Point of procedure. Mr. Chairman, I move under point of procedure under rule 21 of our rules and I would like to ask that the question be put in light of the time and the fact that we have discussed this issue rather exhaustively.

MR. ERESU ELYANU: Mr. Chairman, whereas I support the amendment on the Floor I think it is in the wrong place. I wish to suggest Mr. Chairman, that the amendment on the Floor should actually be moved from where it is now or where it is proposed to be to general and miscellaneous. Thank you.

PROF. NSIBAMBI: Thank you Mr. Chairman. I wanted to point out that it is unprofessional to put

policy matters in the constitution. It is unprofessional for a number of reasons.

THE CHAIRMAN: What clarification were you seeking?

PROF. NSIBAMBI: I am giving clarification. I am clarifying.

THE CHAIRMAN: You actually want to contribute because what you are making is a substantive contribution.

PROF. NSIBAMBI: I am clarifying, Sir, on a professional matter. Thank you, Mr. Chairman. As I was saying, it is unprofessional to put policy matters in the constitution for a number of reasons. First, policies change. So, if we are to put a policy in a constitution and it were to change for example because you do not have money, then you will have to amend the constitution. This is a problem. The second argument is that there are different organs which are given different roles. Some legislate and others implement. If the implementing organ has blemishes, then you have to take steps to ensure that they operate effectively. But by constitutionalising policy matters, you do not necessarily strengthen them. I would like to appeal very strongly to honourees not to make this professional mistake because we shall be harshly judged. I would like to entreat you not to put policy matters in our constitution.

THE CHAIRMAN: Hon. Members, there is a motion on the Floor sponsored by two Members: Hon. Okulo-Epak and Hon. Rwabiita. It has been moved, was seconded and Hon. Wanendeya was among the seconders. Now, there is a Member who wants to make an improvement or whatever. It will be taken as it comes. He wants to move an amendment to the motion as it is. Let me give him a chance to move, then he can come to that.

MR. OMARA ATUBO: Mr. Chairman, just a very small amendment, I have consulted Hon. Rwabiita and Dr. Okulo-Epak and they have agreed and in fact Members who have contributed to it have implied of the need of that amendment. But if you leave it open handed as it is, public awareness of this constitution shall be promoted widely, by whom? Everybody has said governments must do this. So, let us put it there that it shall be the duty of government and then the rest runs properly. That is all. Thank you, Mr. Chairman.

THE CHAIRMAN: Can you frame it properly while we get the clarification? Hon. Omara Atubo, could you frame your amendment properly because you are using two formats.

MR. OMARA ATUBO: Well, I would put this format that, *'Government shall widely promote public awareness of this constitution by...'* then (a) and (b) do come after that opening clause. Thank you.

THE CHAIRMAN: Okay, is that accepted by Dr Okulo-Epak? Let us first of all settle the text of the motion before we proceed to either tear it apart or to approve it.

AN HON. DELEGATE: Mr. Chairman, I seek your guidance because I have no objection to this one and I think it is very, very important that the constitution should reflect it. But as presently worded and even as amended by Hon. Atubo, it has some technical and legal problems. So, I would suggest that - I am not against the principle being passed but I think it should go to the legal and drafting committee for proper wording.

THE CHAIRMAN: The mover of the motion did say that this matter had gone through the Legal and Drafting Committee. Hon. Rwabiita, is that putting words in your mouth?

MR. RWABIITA: Mr. Chairman, the whole purpose of going to the legal committee the other day was to synchronize similar ideas into particular motions or format. But I think I have no objection if the legal committee can go into it and put it in the best legal language. I have no objection to that. But the principle still stands that we must publicise the contents of the constitution. *(Applause)*

DR. OKULO-EPAK: Thank you, Mr. Chairman. As a sponsor to this amendment, I have no problem whatsoever accepting the proposal made by Hon. Kanyeihamba and the improvement suggested earlier by Hon. Omara Atubo. What is important to us is that there should be a good and new principle on public awareness and how you detail it and that dissemination should be by publication and dissemination should be through educational methods. I think those are the principles on which we are insisting. There should be training and dissemination by the media and the other principle is that the document should be translated in as many languages

as possible and widely circulated. I think those are the principles we are trying to emphasize here. Mr. Chairman. And if the Legal and Drafting Committee would like to assist laymen like us and improve it and bring it back in a better form, I have no objection Mr. Chairman.

THE CHAIRMAN: Now, the situation is this, we had virtually closed chapter one until this matter of an additional clause came up. The movers of the motion are saying if the House agrees to the principles more or less on the wording as it is the rest can be a question of panel beating the words into the shape. The principle of publication and dissemination, if we agree on that, then, we can in fact - we are now going to come back to chapter 1 when we resume tomorrow. I would have thought we should have gone to another chapter.

MR. MWONDHA: Thank you, Mr. Chairman. I think I want to indulge my friends. I also agree that this is not the right place for this provision and if we do, then we shall also ask the Legal and Drafting Committee to look for an appropriate place for it.

THE CHAIRMAN: Okay, let us put it this way. This motion has been moved and it is the property of this House and you are debating it. But the House seems to be uneasy about its location.

MR. MIYINGO KEZIMBIRA: Thank you very much, Mr. Chairman. Mr. Chairman, the location of this proposed article is wrong. First of all, the real essence of what the proposers of the amendment have brought is already enshrined in chapter 3 and we have left chapter 3 to the Legal and Drafting committee to handle. I think it would be most proper if this was enshrined in chapter 3 because it is really a directive and a matter of policy.

THE CHAIRMAN: Let us put it this way now. We have got article 18 (1) and this one is part of (3) but it is talking about all organs of State and public bodies and citizens of Uganda should have a duty to promote and protect this constitution. We have yet to agree whether that is the home because of chapter 3's state of affairs. It is in abeyance. I was going to suggest that we refer this to the Legal and Drafting Committee to consider it in light of article 18 (1).

MR. KISAMBA-MUGERWA: Mr. Chairman, I tend to agree that it should be referred to the legal and drafting committee but also I want to suggest

that they examine it in light of what is also transpiring in article 86 (f) which seems to be -

THE CHAIRMAN: I think the Members want to be more specific. The Movers want to be more specific on publicity and dissemination of the constitution.

AN HON. DELEGATE: Mr. Chairman, I think I agree with what you have proposed but the House should pronounce itself whether in principle we accept the incorporation of this provision in the constitution. We should vote on it and pronounce it so that it is recorded in our minutes that the House voted on principle to have this provision in the constitution.

THE CHAIRMAN: There was the proposed change because if we vote on it, on the terms as it is, unless we adopt the amendment by Hon. Omara Atubo which ties responsibility to government, if we agree that we can modify that -

AN HON. DELEGATE: Point of order. Mr. Chairman, is it in order, when the Mover and seconder accepted the proposal that the wording should go to the Legal and Drafting Committee for us to continue discussing what they have suggested? It should be done by the Legal and Drafting Committee. Is it in order?

THE CHAIRMAN: The problem is that our rules do not provide for approving articles in principle. I do not think we have that. Can any Member show me that particular rule? If we are not comfortable with the draft, then let us say we refer it to the committee. But we cannot pass it in principle, because once we have voted on it in terms in which it is, then it stands part of the draft constitution, then we have to come back and re-amend it.

DR. MAGEZI: Thank you, Mr. Chairman. Mr. Chairman Sir, from what 7(1) says, this proposed amendment is going to be dealing more with what is to be implemented. It is going to be a guide to Parliament, to the executive, to Judiciary, etc. I, therefore, strongly urge the Movers that we shelve this proposed amendment until we come to the culture of constitutionalism and accountability in 18 on page 7. Because that is I think, is the most appropriate place where it can be put rather than be put in chapter 1

THE CHAIRMAN: Okay, the ruling is this - otherwise we shall go around in circles. The House is prepared to let this go to the Legal and Drafting Committee. The Legal and Drafting Committee will take into account that there is virtually a consensus in the House that we should have a provision on these lines. They will come back with a text that takes into account that consensus and also the home for it. There are fears that the home may not be where the Movers were suggesting it to be. If we agree on that, then we have to agree that, that does not stop us closing our chapter 1. Okay and had I put the question on chapter 1?

HON. MEMBERS: Yes.

THE CHAIRMAN: Let me put the question on article 3. I had actually put it but it was re-opened because of that. So, article 3 is done as far as the Constituent Assembly is concerned, chapter (1) is settled. And if we come back to it to add another article, that is a different matter but for the time being, chapter 1 and all its articles have been approved with amendments. Agreed. And then the other matter stands referred to the Legal and Drafting Committee. They will report to us next week on Tuesday. If they can do it earlier, there is no problem. They have other jobs so we do not want to clog them.

PROF. KANYEIHAMBA: I am sorry Sir, I thought you had finished. I was very anxious about the announcement which I handed to the Chair sometime ago. It is very urgent Sir.

THE CHAIRMAN: Yes, I can ask you to make it.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. I must beg the indulgence of Delegates that this announcement has come late but we are calling a meeting of all the Delegates who have submitted draft amendments on chapter five particularly those who have submitted from clause 5(1) to 6(1) so that we can synchronize those amendments. And we are calling this meeting at 4.00 o'clock this afternoon in this Hall. Thank you.

THE CHAIRMAN: Hon. Members, it is important that the proposers do attend because that is what will determine our work tomorrow. We are going to chapter (5) tomorrow and the amendments should be synchronized, at least enough of them, to enable us to continue.

PROF. KANYEIHAMBA: Mr. Chairman, the second point is that we have too much work. For example, on chapter 5 alone, there are 114 amendments which have been proposed. So, I had also requested that we should clarify our guidelines to the drafting committee as to how we handle this barrage of draft amendments which of course Members are entitled to submit. So, the Legal and Drafting Committee came up with proposals for streamlining the handling of these but they need the approval of this general Assembly. So, I do not know, Mr. Chairman, whether you could allow me to read them even if we may not have time to approve them tonight.

THE CHAIRMAN: Well, Hon. Delegates, I know we should have adjourned quite some time back but as we agreed we should finish one chapter and I am glad we have. Now, what it is really crucial is the handling of our amendments. If we have 114 on only one chapter and we are supposed to be ready by a given time, then I think we must make our ways more efficient. So, I would like to suggest that we listen to the guidelines which actually will help to expedite our work and then they can use them as a committee in processing our amendments from tomorrow on. Please, just read them to us.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. The proposals have been circulated. I will leave the Preamble which is in (a) and simply read the substance of what should be the guidelines. We are saying:

- 1) All or any proposed amendments to the draft constitution shall first be submitted to the Legal and Drafting Committee for consideration, synchronization and advice to CA in consultation with the Delegate or Delegates who submit the amendments.
- 2) That the committee shall advise the Assembly on amendments it considers appropriate for debate and possible adoption after discussing the amendment with the proposers.
- 3) A Delegate who insists, that notwithstanding the advice of the committee to the contrary, his or her amendment should be considered by the CA in plenary should do so with discretion of the CA Chairman. Any debate on such an amendment in the plenary shall be preceded by disclosure of the advice offered by the committee.
- 4) Preferably - this is just a loose recommendation - Preferably, all proposed amendments to the draft constitution shall be submitted by the 16th September but without prejudice to the right of any Delegate

thereafter, to propose an amendment or amendments in light of developments in subsequent debates or on the consideration.

5) Delegates shall adhere to the rule that proposed amendments except consequential ones must be submitted and brought to the notice of the committee at least three days before they are due to be considered.

6) Draft amendments shall be submitted directly to the office of the Clerk of the CA who will keep a record of the submissions and the name of the proposer. Mr. Chairman, I have already discussed this with the office of the Clerk and my suggestion which is acceptable to him is that until the Legal and Drafting Committee has seen these amendments and discussed them with the proposers, nothing will be circulated. In other words, only those who have been considered by the Delegates and the Legal and Drafting Committee will be circulated to all Delegates and that will therefore help us to reduce some of the load of work. I thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Members, do we have to debate that? I think we take note and say that this procedure should be enforced and if there is need to change it, we can always do it in due course.

MR. LULE WASSWA: Thank you, Mr. Chairman. I am in agreement with the proposal in principle but there are just a few words in clause 3 which say that, *A Delegate who insists that not withstanding the advice of the committee to the contrary, his or her amendment should be considered by this CA in plenary should do so with the discretion of the CA Chairman.* It is that qualification that I am a bit concerned about because if you do not get the discretion of the Chairman, does it mean that, that amendment will be rejected? I think it will be giving away too much to the committee to have the power to reject amendments. But I am in agreement with the proposal apart from that qualification.

THE CHAIRMAN: 'The Chairman' I think means Chairman of the Constituent Assembly. Is that correct? Not chairman of the committee.

MR. WASSWA LULE: Irrespective of which Chairman?

THE CHAIRMAN: Do you mean to say that the next stage would be by leave of the House. Do you want to go to that one?

MR. LULE WASSWA: No no, all I am saying is that as outlined it would help to reduce the paper work as Hon. Kanyehamba put it. But if an amendment is absolutely left to the discretion that he can be barred from arriving in the plenary -

THE CHAIRMAN: The situation they are catering for is the situation where they may advise. But the Member says that he is not interested in the advice. If we left it open, then you may find that most Members say they are not going to listen to the Legal and Drafting Committee. Then of what use is setting up the procedure?

AN HON. DELEGATE: Thank you, Mr. Chairman. There was only one burning issue which I thought I would bring to your attention and the attention of my Colleagues here. I would envisage the work of the Legal and Drafting Committee to collect all proposed amendments and re-arrange them in the order of their relationship. But for the committee to assume the powers of the Chairman and of the Assembly by saying that, this cannot be proposed or this amendment will be defeated, so then let us keep it out. I think let the Legal and Drafting Committee collect all the proposed amendments, enlist them in the relationship to the chapters we are going to discuss rather than pronouncing what is acceptable and what is not acceptable. Thank you, Mr. Chairman.

THE CHAIRMAN: I do not think that is what they are saying. Their mandate goes beyond just arranging the order of reference. We had said to them that some of the amendments are in fact similar as you can see. Hon. Okulo-Epak and Hon. Rwabuta came up with similar amendments and through the medium of the committee we were able to come with one amendment and there were some earlier ones as well in relation to the amendment of 5 and 6. So, I do not think they have over-stepped. I would like to say that we have taken note of this and let us apply it. If we have to change it or modify it, we shall do so as we go along but otherwise I think we must have some kind of guidelines on how we are going to conduct our business here. I think you Members are very anxious to work today. I wish we had the committee's material here.

MR KINTU MUSOKE: Mr. Chairman, if we continued in this way, I am afraid our Chairman will be soon addressing an empty hall. So, I would suggest that he devises ways of ending this discussion.

THE CHAIRMAN: Thank you for drawing the Chairman's attention to the obvious. *(Laughter)*.

MR KAYONDE: I seek guidance, Mr. Chairman, because I seem to be at a loss on this question. You have, kind of, avoided to answer it directly to the Hon. Member, whether we really constitute a quorum to continue with official business.

THE CHAIRMAN: Adjournment is part of official business and that is the next item on the agenda and unfortunately, it cannot be avoided. But if the Chairman walked out of here, you will find that you have gone out irregularly. So, now, given the situation and having successfully completed the chapter, I would like to say that we stand adjourned and resume tomorrow at 8.30 in the morning. Thank you.

(The Constituent Assembly rose and adjourned until Wednesday 31st, 1994 at 8.30 a.m.)