



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

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Friday, 2nd September, 1994.

The Assembly met at 11.40 a.m. in the International Conference Centre, Kampala.

P R A Y E R S

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

COMMUNICATION FROM THE CHAIR

THE CHAIRMAN: I do not have any special communication from the Chair, except to mention that the Business Committee, I think last week, agreed to the fact that we shall have to allow cameras in here at least once or twice a week by UTV so that they can record some of our proceedings. I think there has been a lot of demand that we should be seen while transacting our business and we propose to start on Monday with that exercise but the details will be written down and made known to you.

CONSIDERATION STAGE OF THE DRAFT CONSTITUTION OF THE REPUBLIC OF UGANDA

Chapter 5, Article 51.

THE CHAIRMAN: Hon. Delegates, before we embark on our business of the day, namely, further consideration of Article 51 under Chapter 5, I would like to ask the House to recognise the presence in our midst, this afternoon, of Baroness Linda Chalker, the Minister for State for Commonwealth and Foreign Affairs of Britain and also Minister for Overseas Development who has come to visit our country. Baroness is a friend of Uganda, we all know that - I am sure you all know that - and we are happy that she has in a short space of time come again to be with us. She is concerned not only with Uganda, but other neighbouring countries. I would like to welcome you Baroness Chalker to our Session. We are embarked here on the exercise of considering and approving a Constitution for the people of Uganda after a process of consultation at various levels and today you come, if I may say, at the right time, because Uganda's problem has been human rights over a long period of time and right now the Constituent Assembly is engaged in considering those provisions of the Draft Constitution that relate to human rights and I am glad that you have come to join us at this stage. Hon. Delegates, I am sure you agree with me that we welcome Baroness Linda Chalker in our traditional way. *(Clapping)* You are most welcome.

Now, when we adjourned yesterday, we had just disposed of an Amendment by Hon. Wasswa Lule relating to the provisions of Article 51 of the Draft Constitution, most specifically Clause 2, of that Article. We have now also on record the proposed Amendment by Hon. Sam Kutesa to the same Clause - if you look at the amending sheet, you will see it appears as No. 7. I will now give the Floor to Hon. Sam Kutesa to move his Amendment.

MR. KUTESA SAM (Mawogola County): Thank you very much, Mr. Chairman. Mr. Chairman, when we were debating the Motion tabled by Hon. Wasswa Lule, yesterday, which I opposed, I did present the majority of my arguments which I shall represent today for the purpose of proposing and promoting my own Motion. As you know, Mr. Chairman, the Motion we debated yesterday, sought to delete out of Article 52 Clause 2, the last words 'or the public interest'. I sought then to restrict the wording of clause 2 to the following words: *'In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the rights and freedoms of others'*. And it was deleting the words *'or the public interest'*. Mr. Chairman, my Motion seeks to retain the words, 'or the public interest' but also to restrict the interpretation of Public interest. The reason, - *(Interruption)*

THE CHAIRMAN: Now, before you go to your reasons, I think you would rather read out the text of your Amendment so that we see if it is seconded. Because it is not clear whether Col. Sserwanga Lwanga is seconding or is also a co-sponsor.

MR. KUTESA SAM: Mr. Chairman, I was coming to reading the text because since I tabled it yesterday, I have had a number of discussions with Members of this Assembly and they did put in some words, but I have changed a little of the wording. So, the text that I am moving today is as follows. That at the end of Clause 2 of Article 51, the following words should be inserted: *'Provided that public interest shall be determined by Parliament and shall not include persecution of political opponents or detention without trial'*.

THE CHAIRMAN: Is the proposition seconded? Okay. Now, could you make a copy of that text available to the Chair, because what I have is slightly different.

MR. KUTESA SAM: Yes, I will.

THE CHAIRMAN: So that I will propose that the question is in terms as read out by the Hon. Mover. Now, you may go ahead and contribute to your Motion.

MR. KUTESA SAM: Thank you, Mr. Chairman. I am repeating it, that at the end of Clause 2 of Article 51, the following words should be inserted, that is to say the words appearing after the words 'the public interest' in that Clause: *Provided that public interest shall be determined by Parliament and shall not include persecution of political opponents or detention without trial.*

Mr. Chairman, the arguments that have been presented against retention of the words 'the public interest', have been largely rooted in our past. Our past history is replete with examples of where such clauses as public interest, public order and national interest have been used not so much to promote national interest or public interest but to harass, detain and sometimes kill political opponents in the name of national interest or public interest. I do share those fears. I am also aware of the massive abuse of provisions of this nature. So, the arguments have been that we should get rid of it or where possible, we should weaken it so much that nobody has power to emasculate the rights and freedoms of the citizens of this country. Mr. Chairman, while I agree and as I said I share those fears that have been so rampant in our history. It is still important to provide for Government of the future to act in public interest and that is why I propose that we retain it. We retain this Clause, but add some limitations as to its use or application. Mr. Chairman, in the first instance, the other worry has been that a Government may wake up and say, it is in public interest to ban such and such a Newspaper; it is in public interest to arrest such and such a man. My argument here, in the substance of my Motion is that it should never be at the whims of one man or a group of people, maybe calling themselves Cabinet. It should be the responsibility of Parliament which has been elected and which is sensitive to the public needs and sensitive to the maintenance of the rights of the citizens whenever it is making laws, to take into account the need to make laws that do not infringe upon these rights unduly. That is why, Mr. Chairman, I have introduced the element of Parliament determining what is in public interest. It was assumed in my original Motion that this Clause was an enabling Clause so that subse-

quent legislation will be made by Parliament taking into account how to curtail the power to use public interest. But through consultation, Mr. Chairman, it has become clear that, rather than assume that this limitation is on Parliament, we should explicitly state it in the Clause. That is why I have changed the terms of my Motion to say that, provided that public interest shall be determined by Parliament and shall not include persecution of political opponents or detention without trial.

Now, Mr. Chairman, as I said yesterday, it is important to retain this Clause to enable future Governments to handle disaster, to handle calamities; and to enable Governments to deal with situations that ordinary citizens cannot deal with. I did cite to you, for example, that it is necessary that while we enjoy our rights of free expression of the Press, we must be able at different times in our development, to curtail certain publications for example, if they have an impact on our morals as a society. If we want to prevent for example a pornographic publication, we should be able to do it in public interest. You are free to enjoy your right of expression, but I think as our society develops, we should continue to have certain limitations or guidelines to our morals. That is one instance in which I think you would say, in public interest, Government will not allow pornographic publications. In time, when we develop and become like other countries, maybe pornography will not be objectionable in our society but I hope that will be part of the future and maybe that future Government then will say, it is no longer in public interest to curtail pornographic publications. There are other instances, like I was talking about disease control in an area where you have an epidemic, for example, an epidemic here in Kampala and you do not want it to spread. Parliament should have power to make legislation that will control the spread of epidemics of that nature. Now, when you say that these rights are only curtailed for as long as they prejudice the rights of others, sometimes you may find, Mr. Chairman, that the others in our society are not in position to know that their rights are about to be infringed or prejudiced. For example, the people of Busoga or Jinja for that matter, to be more specific, may not know that there is an epidemic of plague in Kampala and therefore they may not be able to protect themselves against the spread of this plague. It should be the Government as I said, using legislation made by Parliament, to control the movement of people to Kampala, so that they do not go to Jinja and spread this plague. It is only the State that

has capacity to determine or to know that there is that kind of outbreak.

Mr. Chairman, in conclusion, while I know that clauses like these have been in the past abused, I believe that if we curtail their use and still provide for them, we are catering for their abuse. But enabling Governments to perform - to leave Governments impotent is very dangerous and I think it is not right for our Constitution. People fear that these clauses have been abused in the past but so have many things been. The Presidency has been abused and the Army has been abused but that does not stop us from providing for the Presidency or the Army in the new Constitution, provided we limit the powers of those institutions. Mr. Chairman, I beg to move

THE CHAIRMAN: The question is in terms of the Motion as moved by Hon. Sam Kutesa, now available for debate. I will start with Prof. Nabudere.

PROF. NABUDERE (Budadiri West): Thank you, Mr. Chairman. I support the intention behind the Amendment, but I am not happy with the way it is formulated. I would rather suggest that we went by the formulation in Article 59, sub-article 2, which deals with exactly the same situation. And this particular article deals with the same fundamental rights of association and so on and so on, which says that the enjoyment of the rights under this article shall be subject to any laws made by Parliament in the public interest to the extent acceptable in a free and democratic society. That means that formulation is better and the word 'added' shall be determined by Parliament, to me it is not very helpful because in any case, it is Parliament which in the end would determine whether the laws they are making are in public interest or not. In fact, all laws made by Parliament are assumed to be in the public interest. So, just for better formulation, I would have gone along with Article 59 but I support the general idea. I would also add that, it would be better for us to have only one derogation on human rights, because we have this derogation in Article 53 and then we have the same derogation in Article 59 as well as the derogation on the issue of emergency. So, I do not know how we would handle this, but I support the Amendment but we could see if we can just have one general derogation without having to repeat it in every article on human rights. Otherwise, I support the spirit behind it and I would prefer we formulated it in such way that we take the one in 59 (iii).

THE CHAIRMAN: May be before we proceed, we could get the response of the Mover. In other words, is Prof. Nabudere ready to move an Amendment to that, to accommodate what you propose?

MR. KUTESA SAM: Mr. Chairman, if I understand Prof. Nabudere, he is saying that we should not be repetitive about the Chapter.

THE CHAIRMAN: No, he made two propositions. One was to amend your Motion, if it was acceptable, to reflect the wording in 59 (iii). Secondly, he takes the view that instead of having repetitive qualifications on human rights granted in various articles, we should have one qualification appearing as I think it should be in 51, which actually sets out the human rights and then elaborates them in various provision in the Chapter so that we have one single qualification. That one I think, we can pass it subsequently as a general principle and leave it to the technical committee to go and formulate it at the right point within the Draft, but this one comes at the beginning, so it may as well be well written so that it helps us on subsequent ones.

MR. KUTESA SAM: Mr. Chairman, I am totally agreeable to saying that any mention of the term 'public interest' in this Chapter, shall mean public interest, provided that the use of the term 'public interest' in this clause, shall not include political prosecution or detention without trial as determined by Parliament.

THE CHAIRMAN: No, you see (ii) already does make reference to the Chapter. It says, *'in enjoyment of the freedoms prescribed in this Chapter, no person shall prejudice the rights and freedoms of others'*, you were including a proviso. Okay.

MR. KUTESA SAM: Yes.

THE CHAIRMAN: Now, Prof. Nabudere is saying that the proviso would be better framed if we picked the language in 59 (iii). If it was agreeable then, we can propose it as an amendment to your Motion and it becomes the wording of your motion with necessary modifications, of course, because in 59 (iii), there is reference to the article, those could be left out.

MR. KUTESA SAM: Except, I have difficulty with this other expression, Mr. Chairman, of what is called, 'to the extent acceptable in a free and demo-

cratic society'. It is very difficult for me to tell what is acceptable in a free and democratic society because, for example, in a free and democratic Britain, there is no capital punishment but in a free and democratic United States, there is capital punishment. In a free and democratic France, the presumption of guilt is different from the presumption of innocence in England. I have failed to find exactly the meaning of what 'acceptable free and democratic society' really means. So, I have a bit of objection about those terms. *(Applause)*

THE CHAIRMAN: Okay, I think Prof. Nabudere should respond to that, then we move out. Because what we are trying to do, is settle the terms of the Amendment before we debate it meaningfully. What would you say, Prof. Nabudere?

PROF. NABUDERE: I also agree with his sentiments about the difficulty in understanding what 'free and democratic society' means. So, I will go along by suggesting that we use 59 (iii) and include some of his words. I think those words could also be included - not to include the detention and political persecution - it could be inserted and those words, 'in a democratic society' could be excluded.

MR. WACHA BEN: Mr Chairman, I want to make reference to 59 (iii). Mr. Chairman, this concept seems to have been derived from the Canadian Charter of Rights and Freedoms. I was saying that this concept of, 'acceptable in a free and democratic society', seems to have been derived from the Canadian Charter of Rights and Freedoms which was enacted in 1982 and with your permission, Sir, let me read it out to the Members. It says, 'The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'. Now, Sir, the immediate questions which would arise, as has been pointed out by Hon. Kutesa is what is demonstrably justified in a free and democratic society. And what is a free and democratic society? I would want to inform the House that these terms have been expensively interpreted both in Canada and Canadian Courts and by the Privy Council and that there is no way, if they were adopted, in which the hands of our Courts would be tied. If anything, they have Precedence, enough Precedence by which to go and it could even be better for them because by then, any person who is arguing that his rights have been infringed upon, or the

derogation office could run to this precedence either in Canada or to the Privy Council and find out what is the justified in a democratic society. Next, Sir, it seems as if the onus, the burden of limiting these rights, of derogating these rights, is placed upon the State. It is for the State to come out and say, that what is being done is correct in a free and democratic society. I would rather go with the proposed Amendment of Prof. Nabudere.

Now, the problem with Hon. Sam Kutesa's Amendments, the way I look at it as an individual, is that once you start prescribing and limiting, then you give the course problems of interpretation. But of course that is an arguable point. Thank you, Mr. Chairman.

MR. BIDANDI SSALI (Nakawa Division): Thank you, Mr. Chairman. Bidandi Ssali from Nakawa. I would like to submit, Mr. Chairman, that the issue is really a drafting matter. The substance is acceptable I think to all of us - to most of us. It is true that in our society, in our country, the interpretation of a free and democratic society will very much depend on the leadership and every now and then, the issue will be an issue of the Courts of Law. I think it will be unwise to say that whenever we seek redress in the Courts of Law, they have to quote what has been defined in Canada, or whatever the case maybe

I think what we are trying to do, is to plug as much as possible every aspect where the past regimes or even including the present one, if at all, has used to limit the rights. So, I am saying Mr. Chairman, that it is important that we include in these provisions the areas as outlined by the Amendment by Hon. Kutesa. We have suffered so much from detention in public interest. Definitely, I am one of them and there are so many here, detained by the Government of the day or the regime of the day. So, it is important that even if you do not say only detention without trial, but definitely, it is important to state that any Government should not use this provision of public interest to detain somebody. What perhaps is difficult to be specifically stated is political persecution. How is the court going to say this is political persecution and this is not political persecution? So, I think that since we are all agreed that we want to prevent this detention without trial, since we all agreed that we do not want a Government to use this public interest in order to persecute political opponents, I feel that the Legal and Drafting Committee should combine the two - should combine what is provided in 59 (iii), and

the Amendment of Hon. Sam Kutesa because they are all the same. Article 59 (iii) refers to what has been provided in this Chapter, so, there is no need to put the two separately.

So, I finally suggest that we refer this to the Drafting Committee to bring out the essence of what we want - that is any regime not to use 'public interest' to persecute anybody or play about with the human rights.

THE CHAIRMAN: So, you are suggesting that we go with essence but leave it to the Legal and Drafting Committee to polish up the wording?

Let us hear from Hon. Byanyima and then we shall come to the centre.

MISS. BYANYIMA KARAGWA (Mbarara Municipality): Thank you, Mr. Chairman. Winnie Byanyima, Mbarara Municipality. Mr. Chairman, yesterday, I was against the term public interest. I was only persuaded to vote against the Motion of Hon. Wasswa Lule after I saw the proviso that was being proposed by Hon. Sam Kutesa. I had very strong views about the public interest, because I too, lived my childhood under the threat of the public interest. My father being an opposition politician in the 1960s, suffered under the public interest. We had no sense of family, no right of movement, no right to live a life like any other people, in the public interest. And I would like to say here that of the 22 Members of the Parliamentary group of the Democratic Party, he is the only surviving Member of that group today. Some of them died in the public interest. Yes, some of them died in the public interest.

So, Mr. Chairman, I was of the view that the proviso against political persecution is very, very important. There were people detained without trial, that is very easy to establish. But political persecution, thousands and thousands in my constituency and in the rest of Uganda have been the victims of this. Even today, I hasten to add, that even the Government that I support very much, the NRM Government, sometimes has persecuted political opponents. I was disturbed recently when I read a report in the paper, if it is true, that when some people tried to rally for the cause of federalism - federalism which I myself oppose, were dispersed by the police. This is political persecution and I hope that when we have put this down, I do not know whether it is true, this is what I read in the paper, if it is true, this is political

persecution. Federalists should be allowed to make their case in the public, everywhere. So, I hope that the House is going to pass this proviso and that in future all Governments will not be tempted to persecute political rivals. Mr. Chairman, I am about to finish. I do know whether you - *(Interruption)*

THE CHAIRMAN: You conclude your remarks then.

MISS. BYANYIMA KARAGWA: I would also say that article 59 (iii) - I was actually going to move a Motion to ask that, we delete the Clause '*to the extent acceptable in a free and democratic society*' for the same reasons that have already been advanced. We must be very specific. The two things we want to preclude, are: 'political persecution and detention without trial'. I thank you, Mr. Chairman.

THE CHAIRMAN: I will hear from the Hon. Karuhanga, a Member of the Legal and Drafting Committee. Let him take the Floor first.

MR. KARUHANGA (Nyabushozi County): Thank you, Mr. Chairman. Karuhanga, Nyabushozi. Mr. Chairman, I thought I should help the Assembly by showing where the difference is between Hon. Sam Kutesa's Amendment and Hon. Nabudere's Amendment.

THE CHAIRMAN: Hon. Nabudere's proposition, it is not yet ...

MR. KARUHANGA: Proposition, okay. The difference between the two is that, both of them accept that we retain the word public interest. That when you compare the rights of an individual and those of the public, the public should also be protected from the individual. Both of them accept that. Then they move and together they also accept that, that interest should be prescribed by law or by Parliament. Both of them go that far and when they get to Parliament making the laws, then they have a departure. On one hand, Hon. Kutesa is saying Parliament can make the laws to limit, provided they do not make the law to allow persecution of political opponents or detention without trial and he stops there. On the other hand, Hon. Nabudere is saying that '*to the extent acceptable in a free and democratic society*' - now, who interprets free and democratic society? That is the court. In other words, both of them agree that Parliament does its work, beyond that, the courts take over to decide what is a free and

acceptable in a free and democratic society. Hon. Kutesa is saying, no, no, we just limit only. To that extent, Hon. Chairman, we now must decide where we want to place the power.

In my view, I find that I agree with Hon. Nabudere's proposal. If Hon. Kutesa could accept, we adopt Hon. Nabudere's proposal to repose this power after Parliament has done its work. If Parliament does crooked work, at least there is always the Court to say, what you have done is not right. There is sharing of power between Parliament and our courts. Hon. Kutesa is saying, no, this power should not be shared. Parliament should do what it should do, provided it does not do the other one - the limitation. As I explained, *-(Interruption)*

THE CHAIRMAN: I think you have now reached a stage where we must agree on the text of the proposed Amendments so that we debate one disciplined text. The Chair was allowing an exchange of views because of the point raised by Hon. Nabudere. Either we get the Mover to agree with formulation as Hon. Nabudere does propose, or we have a formal Amendment made of the Motion as moved by Hon. Kutesa to reflect some of the sentiments that have been made on the Floor. Hon. Babu you have been indicating that you have the answer.

MR. KARUHANGA: Which means ...

THE CHAIRMAN: No, let us hear from one Member first.

CAPT. BABU (Kampala Central Division): Mr Chairman, thank you very much. May be some of you do not have the Universal Declaration of Human rights, but if we had it, probably the free and democratic society would be answered. Because it is Article 29 and in Clause 2 of that, it reads: *"In the exercise of his rights and freedoms, everyone shall be subject only to such limitation as are determined by law, solely on the purpose of securing due recognition and respect for the rights and freedoms of others and of the meeting the just requirement of morality, public order and general welfare in a democratic society"*. Mr. Chairman, we are signatories to this Article, therefore, meaning, we recognise a free and democratic society which is acceptable by the Global community. If that is so, we therefore, must have a standard norm of what a free and democratic society is and therefore, I am quite sure the Constitutional Commissioners when they

wrote 59 (iii) had this in mind. And if that is so, I agree entirely with Prof. Nabudere that we should combine the two and come out with an off-spring that is going to give us the views and I was just about to say that Hon. Kutesa should not be worried by the free and democratic society because that was his objection - that actually the meaning stays the same. We are trying to define a scope of public interest and its limitations. In principle, Hon. Bidandi Ssali was right, that we must limit it but I think if we marry the two, we are going to find ourselves with a better Clause that is going to make sense. I agree with you, Mr. Chairman, that if we can come out with a text now, we will have a better Clause that is going to help us to reach our requirements. Thank you very much.

THE CHAIRMAN: Thank you. What we are looking for is a text which we can debate and finally adopt or reject. Now, Hon. Kutesa who moved the Amendment and the proposal has been made. I saw his hand being put up, but it would appear Hon. George Masika has the answer.

MR. GEORGE MASIKA: (Mbale Municipality) Thank you, Mr. Chairman. The important thing about this Chapter is really about the qualification of the rights which are given. And in the past as Members have already observed, there have been intrusions in these rights and Parliament has not helped.

Now, Article 59 (iii) is in fact, a bad one, in that it supports the Police Act which has been responsible for most of the harassment of political opponents. I therefore support the proposition and the Motion moved by Hon. Kutesa, in the sense that it specifies a particular non-intrusion in the human rights. That is persecution of the political opponents and the detention without trial. If we leave it, to the public interest, we have already experienced it, that there is no good sense in some Parliaments and therefore it is not right for us to leave it for them to do it as they feel. Let us provide correct qualifications to each and every Article of fundamental freedoms and human rights as they are provided now, not leave it widely assumed; and later we regret what has been done by the Parliament or not done. So, between the two, I would object or oppose Prof. Nabudere's Amendment because it does not specifically eliminate the abuses which we have experienced.

THE CHAIRMAN: No, Hon. Kutesa, I saw you consult with Hon. Nabudere. Let us first settle the terms of the wording, then we go on.

MR. SAM KUTESA: Mr. Chairman, before I give you what text I want to stick to, there seems to have arisen some confusion and the confusion is, that when we do not state that it shall be in accordance with acceptable standards in a free and democratic society, the Courts have nothing to determine. The Courts are free and shall continue to be the final interpreters of this Constitution whether we include that Clause or not. And in my opinion, what should go for determination about this Clause, (by the Courts whenever any person feels aggrieved) it is whether in making a law, Parliament has acted and has infringed its rights because of political reasons. I find no need, Mr. Chairman, to vary the terms of my Motion.

THE CHAIRMAN: Okay, that being so, let us do one thing. Let us debate the Motion as moved by Hon. Sam Kutesa. The others have been observations and suggestions. Now, let us hear substantive contributions - let us first of all hear debates on his proposition because we have heard a running around in circles. Hon. Leander Komakec.

MR. KOMAKEC LEANDER (Aruu County): Mr. Chairman, I am very much in favour, in the spirit, of this Motion on the Floor, but I have certain difficulties with it, in the sense that it is rather limited to only one aspect that has always led to the infringement of human rights - that is the political. I would rather prefer that this proviso also takes in an area which is of great concern to the public and which has always been rather insidious because it is not very spectacular. Here, I am talking about the area of public morality. I think I would rather want to move a Motion if possible or maybe if it is possible to widen the political as well as the moral aspect of infringement, so that it is all general. I think I would like to remind Members here that we are talking about what is general under this Chapter of the protection and promotion of human rights and I think the article should be broad enough to cater for all the areas where human rights and freedoms have and can be violated. So, I would prefer to find a wording of including morality as besides the political. Thank you.

THE CHAIRMAN: Are you suggesting that the Draft should say that in passing laws, the Parliament shall not include persecution of political opponents, detention without trial and immorality? Because, I think that one cannot really fit into this proposition

MR. KOMAKEC: I think it can be contained, Mr. Chairman, in this way, if my suggested Amendment is acceptable. Because if you look down, there is Number 8 Amendment and Number 9 - they are all coming to qualifying this particular Article and I think it would be taken care of. So, what I would want added in this Article, is the words, 'as determined by law'.

THE CHAIRMAN: No, that has not been seconded. Hon. Okalebo.

MR. OKALEBO (Bukedea County): Thank you, Mr. Chairman. My name is Okalebo, CA Delegate Bukedea, Kumi district. First of all, I would like to seek clarification from Hon. Kutesa, as to whether the word personal as used in the proposed Amendment means and includes Government? Because as the article stands now, it prohibits any person from prejudicing the rights and freedoms of others, in or in the public interest. But now what we are after preventing is the detention without trial and then the persecution of political opponents. Whoever will purport to do these things will always do so in the names of Government and I wonder whether the proposed Amendment as it stands, means and includes Government. If it does, I am in full agreement with the suggested Amendment.

THE CHAIRMAN: If - maybe you do not recollect fully the Draft Amendment - he is saying provided that, it is a proviso, it is not a continuation; provided that public interest shall be determined by Parliament and shall not include persecution of political opponents or detention without trial. So, it is directed at both Government and Parliament that in making laws in relation to restriction of the public in terms of the public interest, should not extend to laws being made to detain people without trial or provide for persecution of political opponents. So, I think that should cover you.

MR. OKALEBO: Thank you very much. So, in that respect and in that spirit, I do support the proposed Amendment. Thank you.

MR. BATEGANYA MUKUVE (Bukooli Central): Thank you very much, Mr. Chairman. I wish to support the Amendment but I have noted one omission which I think could be the cause for abuse later on. I would like to request this House to include the word 'religious opponents' after political. Thank you. I would like to add this one for the following reasons.

THE CHAIRMAN: No, you have not been seconded, so you cannot go on to give reasons because it is a form of Amendment. Hon. Zziwa.

MRS. MARGARET ZZIWA (Women Representative - Kampala): Thank you very much, Mr. Chairman. Margaret Zziwa - Kampala. Mr. Chairman, I wish to support the Motion fully. In fact, the worries as expressed by Hon. Nabudere, because mainly of the derogatives which arise, may be because of the two deferring situations in article 59 (iii) and then 51 (ii). We can maybe favourably come out with a definition or an interpretation and maybe we lay it out in article 286 or somewhere, some of these terms like public office, are defined, we may go ahead and define public interest, especially to include as we favourably understand it, that it can include public morality, public health and other issues that really go into line of protection of public interest. In this line, we shall have protected exactly what Hon. Sam Kutesa is bringing in. Whereby specifically under article 51 (ii), we are only catering for or we are excluding only cases of public prosecution and detention without trial. Mr. Chairman, I wish to move.

MR. SABIITI JACK (Rukiga County): Thank you very much, Mr. Chairman. Jack Sabiiti Rukiga County, Kabale district. The substance of Hon. Kutesa's presentation is to me, generally acceptable. But my worry is that, in some aspects, it contradicts certain other provisions in the Draft Constitution and it limits and actually restricts public interest to two aspects. It is unfortunate, Mr. Chairman, that yesterday some of us were not given a chance to contribute to the Motion raised by Hon. Wasswa, maybe we would have tried to put more flesh to the debate and I request Hon. Mr. Chairman, that in future your eye should catch, you know, as many people as possible so that most of us are given a chance. I would suggest, Mr. Chairman, that Article 51 (ii), is amalgamated with Article 59 (iii). This certainly will cater for Hon. Kutesa's and Hon. Nabudere's Motion. In other words, Hon. Nabudere's Motion, actually makes it clear, because we talk of public interest and again it defines who actually will define public interest. Now, it is not correct that we have no clear definition of free and democratic society. There are human rights international standards, these are contained in the African Charter on Human and Peoples Rights; the International Declaration of Human rights; and the International Covenant on Civil and Political rights. And the question

therefore, of the definition of a democratic, free society surely should not arise. I therefore support Hon. Nabudere's and Hon. Kutesa's Amendments to be fused together. I therefore move.

THE CHAIRMAN: No we ruled that we are discussing the Motion as originally moved by Hon. Kutesa and we are getting the for and against that Motion. I have given the Floor to the lady here.

MS. KAWOoya ANIFA (Women Representative-Masaka): Thank you, Mr. Chairman. Anifa Kawooya, Woman Delegate, Masaka District. Mr. Chairman, I wish to support the Motion on the following grounds. Article 51, Clause 2, like many other Articles, under this Chapter, which are from recognised rights and freedoms are reasonably justifiable in this Draft Constitution and under this Chapter. It has been repeated in most cases, the words, 'democratic and free society' or 'necessary in public interest' as provided for in Article 59, Clause 3 which Hon. Nabudere wishes us to emerge with Article 51, Clause 2. Mr. Chairman, we expect these human rights to be enforceable and justifiable. If we go into the definition of public interest and the definition of a democratic free society. This will negate the whole Article because the definitions are very broad. It opens a floodgate and it is a difficult concept unless defined in detail, as Hon. Sam Kutesa has just mentioned and expressed.

Mr. Chairman, the word 'Public interest' as mentioned by Hon. Nabudere is provided for in many provisions as mentioned above. And whereas such terms, standards or clauses should be avoided because they are abstract and elusive and are thus liable to abuse it is true that they have been abused in the past. But if a person or a group of persons is to be denied what is otherwise his right or what is thought to be a right, then the circumstance of denial must be concretised and well defined. If a person or group of persons is to be denied what is otherwise thought to be a human right, then the circumstances of denial as mentioned by Hon. Sam Kutesa should be clearly defined putting into consideration, as most Members have mentioned the political implications and there is need, Mr. Chairman, to protect the individual and the public interest, of course, and well there is another need of limitation on the Parliament while determining what is in public interest instead of leaving it to the whims of the Parliament to decide upon the interest of an individual.

Mr. Chairman, I, therefore, stand to support the Motion as moved by Hon. Kutesa. And in the interest of the people, it still can be merged with Article 59, Clause 3 which is clearly defined. Thank you.

DR. ODUR (Dokolo County): Thank you, Mr. Chairman. I stand to support this Amendment by Hon. Sam Kutesa. The definition of the phrase 'Public interest' to exclude persecution of political opponents or detention without trial goes a long way to curb the possible abuse of the provision of this Article by any authorities with wicked intentions. Mr. Chairman, the enjoyment of rights and freedoms should be limited only by the requirement to respect the rights and freedoms of others and vague statements such as 'Public interest' are often abused by the Executive to harass political opponents. It is thus, important that if there are exceptions which are considered important for the guidance and protection of rights and freedoms, they should be included in the Constitution and it should be made very clear that besides the provisions being limited, no person or law can infringe on those rights. And I believe, Mr. Chairman, that this Amendment does just that and I beg to support the Amendment.

MAJ. GEN. TINYEFUZA: Point of Procedure. Mr. Chairman, I had wanted on a Point of Procedure to make some suggestion which would maybe assist us because right now we have moved that we discuss Hon. Kutesa's Amendment as it appears. But as you notice, Mr. Chairman, Members keep referring to both his and the articulation of Hon. Dan Nabudere which was actually never articulated as an intended Amendment. Yet, looking at Hon. Kutesa's Amendment and looking at what Hon. Dan Nabudere was talking about, the two have a lot in common and, maybe, amalgamating both or synchronising both and debating one as such would actually be to the benefit of this House than limiting ourselves to one. Because Hon. Kutesa's Amendment has very important aspects in that it specifically limits the powers of Parliament to specific matters while the limitation, as appears in 59 (3), Mr. Chairman, although it is there, it is rather vague and wide but it is also wide enough, actually like a free and democratic society would be. So I wanted, Mr. Chairman, that we invoke Rule 48. First of all, I would request that the Chair asks Hon. Dan Nabudere to move his proposal as an intended Amendment and we invoke Rule 48 (12) so that we do not miss. Because now I see a tendency that we may actually pass, maybe,

Hon. Sam Kutesa's Amendment and miss out the salient points which appear in 59 (3). So we move by that rule where it says, Mr. Chairman, that, 'Where two or more proposed Amendments to any Article seek to attain the same objective but in different ways, or the wording Amendments differs, sponsors of the Amendments may be required by the Chairman to discuss the Amendments and consolidate them or agree on compromise Amendments that will be acceptable to the sponsors'. I think, Mr. Chairman, this may help us to have a more consolidated view on this point which was very controversial yesterday and which still is. So I beg to move that we invoke that rule, Mr. Chairman.

THE CHAIRMAN: You see, it does not have to be a Motion to invoke 48 (12). It is a rule that empowers the Chair to call a conference of Movers but what we have here is not a set of one or more Motions on the Floor. Rule 48 (12) says, 'where two or more proposed Amendments...'. We have one proposed Amendment. That is one of Hon. Kutesa. Prof. Nabudere's proposition was by way of comment and suggestion. It was not picked up in a form of an Amendment to the Amendment of Hon. Kutesa. Of course, the Motion is still on the Floor but since this matter has been raised regarding procedure, can we hear from the Chairman of the Rules Committee.

MR. OMARA ATUBO (Otuke County): Mr. Chairman, I only wish to draw to the attention of the House that if we accept the proposal of Hon. Nabudere which I fully agree with, we shall have to amend, in fact, Article 51 (2) because what Nabudere is proposing is simply not on public interest but to qualify the whole of Article 51 (2). Yesterday, we approved that in the enjoyment of rights and freedoms prescribed in this chapter, no person shall prejudice the rights and freedoms of others or the Public interest. Now, if we want to qualify the enjoyment of public interest as it is proposed in the type of qualification in article 59 (3), or better still, the qualification given in the Canadian version, which to me is a much better version, then we have to use that one and practically delete that qualification of 51 (2). Because the Amendment of Sam Kutesa is dealing with only the qualification of public interest, leaving intact the qualification we have already approved. We have approved two basic qualifications already, that is prejudice the right of others and of public interest. Now, Sam Kutesa is saying that public interest should not allow political persecution or detention without trial but Nabudere is saying, 'Look, we

should qualify the derogation of public interest in the context of article 59 (3) and Ben Wacha is coming even with a better proposal which I support - that is the Canadian version. This is the information.

At the same time, I am saying that procedurally, Mr. Chairman, I thought we should also look ahead at the Amendment of Hon. Wasswa Lule which substantially is detailed. In another version of the Hon. Sam Kutesa, I have been appealing to Hon. Wasswa Lule that if they could put their heads together, we may actually find that we have agreed on a better version of the one of Hon. Sam Kutesa by including one or two words of the one of Hon. Wasswa Lule and would save us a lot. So, the proposal of Hon. Nabudere is not a simple one. That means we have got to go back and actually retract what we have approved.

THE CHAIRMAN: I think we would rather work going forward. We have got a Motion on the Floor by Hon. Kutesa which has attracted substantial support but there are also some Members who have some misgivings as to whether it goes far enough. Now, either we try to redraft the whole thing on the Floor here or we say we take the chance of the Lunch break. The Legal and Drafting Committee Chairman sitting with Hon. Kutesa, Hon. Nabudere and Hon. Wasswa Lule assisted by Hon. Medi Kaggwa - because he had also shown some interest in some version - then they can come out with something which we can take on when we come back from lunch. I think that is a much better way of doing it. *(Applause)* Otherwise we shall be going in circles. Could you please have a conference during lunch under the Chairmanship of Hon. Ben Wacha and then you come back here with a version which we shall consider in the afternoon.

With that agreement, let me adjourn the House to 3.00 O'clock allowing also the Committee to do some work. So, we stand adjourned for lunch to 3.00 O'clock this afternoon. Thank you.

*(The Assembly adjourned and resumed at 3.00
(O'clock)*

THE CHAIRMAN: Hon. Delegates, when we adjourned, we mandated a small Committee under the chairmanship of Hon. Ben Wacha to come back with some synchronised draft of the various propositions relating to the Amendment that is still on the Floor. Unfortunately, they seem to have

come in prematurely because I can see one Member of the Committee - no, two Members, - Hon. Nabudere and Hon. Wasswa Lule. I do not know whether they are in position to report or Hon. Kutesa is also coming in to propagate his Amendment. So, we just have to wait for a little while. Thanks.

(The Assembly waited for a little while)

THE CHAIRMAN: The Chair has been briefed and we are now in a position to commence business and I call the meeting to order. As I did indicate earlier, just a few minutes ago, we had a Committee working over lunch to synchronise the various positions which were emerging with regard to the qualification on the rights that are set out in Chapter 5. The Committee had a working session over lunch and now they are in a position to report and I would like to ask the Deputy Chairman of the Legal and Drafting Committee to report from that Session.

MR. BEN WACHA: Thank Mr. Chairman. As you have already indicated, we did have a session during lunch break on the Amendments of Hon. Kutesa and what we now call the Amendment of Hon. Prof. Dan Nabudere. The Committee has the following to report:

1) We have agreed in the Committee that there should be only one Derogation Article in the Constitution. So, all aspects of limitations on the rights of the individual under the Chapter should be covered only by one Article and we have also agreed Sir, that this particular one Article should come at the end of the rights which have been specified. In other words, we are proposing, Sir, that this Article should be removed from the place where we are now discussing it and be taken, based on the considered opinion of the Technical Committee, either to Article 69 or to Article 70. We have also agreed that in all other Articles where there are Derogation Clauses, those Clauses when we discuss them, should be passed pending the House's discussion of the particular format which we are going to present towards the end of the discussions on human rights provisions. We also agreed that Hon. Sam Kutesa's Amendment and Hon. Nabudere's Amendment be combined to form only one Amendment which shall be presented to the House towards the time when we feel it is most appropriate to have it included. These two Amendments Sir, will also affect the proposed Amendment of Hon. Wasswa Lule. And we agreed that, in the

context and in the format in which we have drafted it, it would cover effectively what Hon. Wasswa would have wanted us to discuss. Therefore, Hon. Wasswa Lule has withdrawn the Amendment which would be appearing immediately after that of Hon. Sam Kutesa.

I am sorry, Sir, the text of the combined Amendment is not before us here. It is being typed but since we are proposing that it be discussed much later, I beg to move that the House proceeds with other business, taking into consideration this report, Sir. I thank you.

THE CHAIRMAN: Thank you for that report. That means that we stand over consideration of the amalgamated text which not only covers the two ideas that came first from the Mover but from the observations of Hon. Nabudere and also the intention to move by Hon. Wasswa Lule

MR. KUTESA S.: Thank you very much, Mr. Chairman. I agree with the report made by the Vice Chairman of the Drafting and Legal Committee and in particular that we agreed that there should be one Derogation Clause. However, when he was reporting, I heard him say that we said it shall be at the end. That was not agreed. Thank you

THE CHAIRMAN: Well, even if it was not agreed. It would be very difficult to find a home for it under the present - really if it is going to be a qualification on all the rights which have been amplified in Chapter 5, then it should come at an appropriate place where it qualifies all of them but not to be seen to be limited to the provisions set out in any particular Article. In fact, it should assume an Article of its own. I do not think really we should raise debate but I will ask Hon. Wanendeya

MR. WANENDEYA (Budadiri East): Thank you very much, Mr. Chairman. I would like to know if the Amendment I was trying to propose in connection with Hon. Kutesa's Amendment or proposal and that is instead of Parliament we put Council of Religious Leaders in Uganda. Mr. Chairman, I say this with all sincerity because *(interruption)*

THE CHAIRMAN: No, I think, Hon. Wanendeya, we cannot begin debating the text. What has happened is that Hon. Kutesa's text no longer will exist as a separate entity. So, what will happen, when we come to debate the Draft as amalgamated by the Technical Committee, Technical meaning - both

members plus the Drafting experts, then you can raise the religious aspect of that Document. Copies are going to be made available, so we cannot now move to discuss it in any form at this juncture.

MR. WANENDEYA: But, Mr. Chairman, before I get off the Floor, which you kindly gave me, I would like the Legal and Drafting Committee to take that into consideration. Secondly, Mr. Chairman, there is the word 'Persecution' I would like another word, 'Persecution and intimidation'

THE CHAIRMAN: Hon. Wanendeya, we have not yet got the text with us. We do not even know whether the word 'Persecution' is there. In other words, we cannot anticipate debate.

MR. WANENDEYA: Okay, I thank you, Mr. Chairman.

MR. BEN WACHA: What we meant by the end, Sir, is that, if you look at Chapter 5 - there is the general sub heading and then on Page 26, there is another subheading - 'Human Rights and Freedoms During a State of Emergency.' We were saying, at least that is what I understood the Committee to have directed me to say, is that, the proposed Article should come at the end of the subheading 'General' That is about article 69 or article 70. That is what I meant. I did not mean the end of the constitution.

MR. MULENGA (Democratic Party): Thank you, Mr. Chairman. There are two limitations that are provided for in the Draft and from what has been recommended, I am worried that they are mixed together. In Article 51 Clause 2, as it stands now, there is provided a qualifications for the enjoyment of rights 'General' Then, the following Articles 52, 53, 54 and so forth, provide what is called the protection of a particular right and that is where you have Derogation and Derogation, Mr. Chairman, is not the same for each right. If I may use an example, the Derogation in respect of the Right to life is different from the Derogation in respect of the right to personal liberty. And you come to, for example, protection from slavery and servitude. There is no derogation. It is an absolute right. So, when you talk of a general Clause that will deal with one uniform Derogation, I get concerned that perhaps we are missing the point about Clause 2 of Article 51 which is saying that the enjoyment of rights is subject to the rights of others and yesterday we had a debate about public interest also. But Derogation per se, is to say,

a Law may be passed to say you can lose life; a law may be passed to say you may be imprisoned, a law may be passed to say your freedom of movement is restricted this and that way. So, I do not see how we can envisage a general Clause. Of course, the legal experts can help us there - A general Clause that will cover all derogations. It would be nice if we do not have any derogation at all but I think it is necessary that we do. Thank you, Mr. Chairman.

THE CHAIRMAN: Before I could comment on it, let me ask Hon. Katureebe because I can see Clause 2 is actually a general Derogation.

MR. KATUREEBE (Bunyaruguru County): Thank you, Mr. Chairman. As you have quite rightly just pointed out, Clause 2 itself is attempting to be a general Derogation because it is talking of the enjoyment of the rights and freedoms prescribed in this chapter. In other words it attempts to talk about what is provided in the chapter as a whole. In other words, it attempts to talk about what is provided in the chapter as a whole. Then in subsequent Articles you find Articles where there are specific Derogations. So, our concern has been, if this is supposed to be general, can we maybe broaden it so that it is of general application to what is contained in the chapter?

THE CHAIRMAN: If I may recollect, the report was that, as we go to the articles, we shall look at the qualifications of those rights by standing them over until we come towards the end and see whether we can fit them together with what is coming. And if that happens then it covers everything or we can then leave room for some specific peculiarities as and when it is deemed necessary. That is how I understood it. Thank you.

MR. MAYANJA, A (Bussujju County): Thank you very much, Mr. Chairman. In view of the fact that the Chairman or the Vice Chairman of the Committee has reported that they are still typing the Draft and it is not yet before us and he moved that we should go to other business. Is it really in order for us to debate this matter, when the text is not before us? Because without the text, can we really determine whether it should be in this place - in article 51 or some other unspecified place later on?

THE CHAIRMAN: I thought we agreed that it will be at some subsequent discussion. What we are doing is clarifying the approach the Committee took

in arriving at that. Having clarified to the satisfaction of everybody, we can now go on to other business and that business is that (*Interruption*) Yes, Hon. Kirenga, is it absolutely necessary?

MR. KIRENGA (Mityana North): Mr. Chairman, before we leave Article 51, I want to remind you Sir, that I have an Amendment which is referred to in the list of proposed Amendments but which is not summarised. So, I am asking for your indulgence.

THE CHAIRMAN: Did you discuss it with the Legal (*Interruption*)

MR. KIRENGA: It was submitted to the Clerk long ago. In fact, long before...

THE CHAIRMAN: But was the text discussed? Does the Chairman of the Legal and Drafting have a memory of an Amendment of 51 (*Interruption*)

MR. KIRENGA: This is about culture. The Amendment was circulated but the first one was circulated long ago. About three weeks ago.

THE CHAIRMAN: Then I am asking whether they have in their memories (*Interruption*)

MR. KIRENGA: This is an Article about culture - article 51. I want to add to these freedoms another one (f) or (g).

THE CHAIRMAN: We already have (g).

MR. KIRENGA: It could come before (f). Before the last one. Before *Other rights and freedoms enshrined in this Chapter* I want to insert something there.

THE CHAIRMAN: No, we have (f) which was yesterday's (g). The intention is to make (f) the last one.

MR. KIRENGA: So, Mr. Chairman, I want to insert something there, with your permission.

THE CHAIRMAN: Let me get from the memory of the members of the Legal and Drafting Committee whether at any stage - Hon. Karuhanga, you seem to have a memory - Was it discussed in the Committee? Is it taken care of by some other Amendment we have already handled?

MR. KARUHANGA: Mr. Chairman, it is not taken care of by any other Amendment and I think we can go ahead and discuss it.

THE CHAIRMAN: Hon. Kirenga could you read it out, so that we decide whether it should be discussed.

MR. KIRENGA: Yes, Mr. Chairman, it is circulated and it is as follows: *Freedoms to adhere to the culture and cultural institutions of the community to which he belongs or the community of his choice*. I want that to be a separate freedom in view of the recent developments in our cultural institutions in *(Interruption)*

THE CHAIRMAN: Are you, therefore, having a consequential Amendment on Paragraph (a) by striking out the word 'culture'.

MR. KIRENGA: In fact, I have said the word culture should be struck out from there. That is what I said before, so that it is taken care of separately because of its importance.

THE CHAIRMAN: Have you looked at 64 (1)?

MR. KIRENGA: Yes, Mr. Chairman, I did.

THE CHAIRMAN: Because you see - the right to culture is stated in 51 (1) and then amplified in 64, so that why does it have to stand out separately in article 51 when it is mentioned and then amplified in 64?

MR. KIRENGA: I have seen it, Mr. Chairman. What I am trying to point out, in view of its importance, I would not like it to be just amplified upon. I would like it to be stated categorically so that it is clear to everybody that this a fundamental right.

THE CHAIRMAN: Can I hear from - well, you see - are you going to assist him in the subject or you want to speak in support? Yes.

MR. MAYANJA A (Bussujju): Incidentally, it is Bussujju not 'Busunju'. And I see in the minutes it is still written 'Busunju'.

THE CHAIRMAN: Maybe they want you to shift. *(Laughter)*

MR. MAYANJA A: Mr. Chairman, as I understand it, Article 51 is as it were a kind of a summary

or an enumeration of the rights and freedoms, then the subsequent Articles 52, 53 up to the one you have mentioned 64, go on protecting the rights and freedoms which have been enumerated in 51. Therefore, it would be proper in my submission if this freedom to adhere to the culture and cultural institutions of the individual's community or if he does not want to choose to adhere to those, he can choose the culture of another community. Yes, now we can enumerate it here and then come to adumbrate it or to exemplify it or to particularise it in the subsequent Articles, Mr. Chairman.

THE CHAIRMAN: You see, what I am finding difficult is, article 51 (a) already does mention culture. If there is need to sharpen the reference to the right to enjoy and adhere to culture, the Amendment should correctly come under article 64.

MR. MAYANJA A: This is to cultural institutions - to adhere to cultural institutions. You see, culture can mean all sorts - it can be religion, it can be what - but you can see religion is repeated, creed is repeated, culture is repeated but this one is talking specifically of freedom to adhere to one's cultural institutions like clans, like kingdoms, like what.

THE CHAIRMAN: But you see that is exactly the point I am trying to make. That by drafting article 64, you can actually bring out the two legs, culture generally and cultural institutions as such, so that we leave article 51 as a summary and it does summarise in (1)(a) *(Interruption)*

MR. MAYANJA A: By speaking of culture?

THE CHAIRMAN: *Life, liberty, dignity, education, culture, security...* and so on. And then in article 64, it can be redrafted to say *'Every person shall have the right (a) to enjoy and practice (b) adhere to cultural institutions'*. So that it has two legs and it covers the whole thing properly taking -

MR. MAYANJA A: Maybe we could - so long as it is in, I would not fight very much where it is put but I think to be more logical to enumerate it here along with - of course, this is Law of Inclusion and Exclusion - so here it would be within where we enumerate the rights, then we come to particularise them later on.

PROF. KABWEGYERE (Igara West): I think there seems to be a bit of confusion which is arising

out of possibly thinking that you could have culture and have cultural institutions separately because by definition, institutions are buildings within a culture. So, when you talk of a culture, you are already implying institutions. So, when you are talking of, for example as you are saying in 51 - when you talk of the following: *Life, liberty, dignity, education, culture* - , you are saying institutions of culture are included in that word. Now, I think if there is going to be, as you said, an amplification, it could be in article 64. Certainly, it should not come anywhere near down again.

THE CHAIRMAN: But I think we are now taking along time on this. Since it has been seconded, I take it that the Member for Busujju has seconded the intention. Member for Mityana North, could you move your proposition? Then we shall react to it and then proceed. Because otherwise we shall waste a lot of time.

MR. KIRENGA (Mityana North): Mr. Chairman, I move that we amend this Article 51 by adding thereto the following clause - I can leave the renumbering to some later stage.

THE CHAIRMAN: It will come as (g)

MR. KIRENGA: The Amendment I am introducing is in the following terms, i.e. *Freedom to adhere to the culture and the cultural institutions of the community which he belongs or the community of his choice*. I beg to move, Mr. Chairman.

THE CHAIRMAN: That does not remove the word 'culture' from the Paragraph (a).

MR. KIRENGA: And also, Mr. Chairman, by deleting the word 'culture' from Paragraph (a) as it is catered for in this Amendment.

THE CHAIRMAN: Okay, it has been seconded. We give him the chance to speak for his Motion. I will frame the Question and then we discuss from there. I think let us be fair. Let us give everybody a chance to be heard.

MR. KIRENGA: Mr. Chairman, I will be very brief. The point I am trying to emphasise here, is the importance of culture in this Constitution which we are going to make. The importance of those institutions that they should be catered for separately in one Clause. In fact, at a later stage we shall even say

traditional leaders should have an independent chapter. What we are trying to avoid is to group these important freedoms vaguely, somebody may not understand that he is included even in that definition. So, I beg to move, Mr. Chairman.

THE CHAIRMAN: The question is that article 51 Clause (1) be amended by inserting another paragraph - well it will be numbered by the Drafting Committee but definitely after (f). Now, the present (f) has been shifted already. So, the next will be (g), then what is (f) will come after (g) so that it reflects the terms that have been read out but also to include a deletion of the word 'culture' from paragraph (a).

I now open debate on the matter and call upon the Member for Bussujju to speak to the Motion.

MR. MAYANJA: I am very grateful, Mr. Chairman. Mr. Chairman, Hon. Delegates, this country has rich cultural traditions and a rich cultural heritage. Many institutions, in some of these, there are institutions which confer privileges, for instance, I am a Member of the *Mamba* i.e. the Lung Fish Clan and tendency when one talks of the individual who has got rights and no discrimination and no favouring at all. It may be taken that, unless we specifically mention the right, my right to adhere to my clan and its hierarchical organisation i.e. the *Lunyiriri*, the *Mutuba*, the *sigu*, the *kasolya* and so on. Then, somebody may well say these people are trying to enjoy rights which are greater than other people's. Therefore, Mr. Chairman, it is right and proper that we should include this section which makes it clear that when a person adheres to the cultural institutions of his choice, whether they are clans, whether kings, he is not breaking the Law.

In the previous Constitution of 1967, indeed there was a provision which said, *Nobody shall have, nobody shall enjoy any privilege by virtue of his birth*. Now, that tended not only to prohibit kingdoms but in my understanding humbly, it tended to also exclude Heads of Clans. Because Heads of Clans do enjoy certain advantages by virtue of their being the *Bataka babusolya* or their being the Heads of *Masigu* or Heads of *Mutuba*. Now, when the NRC made provision for the restitution of Kingdoms, they also included in the Statute, the Amendment to the Constitution, a Clause which in similar terms - *That every person shall have the freedom to adhere to the cultural institutions which he belongs or of his choice*. So, I think, in the new order of things,

it is proper, necessary and important to include this right which is for those - I imagine many people have got their clans, many people have got many other things there might be other cultural practices. Indeed, the Chair might belong to some cultural practices or Institutions like *(Laughter)*. Mr. Chairman, I beg to support.

THE CHAIRMAN: That stands unquestioned Hon. Medi Kaggwa

MR. KAGGWA (Kawempe Division South): Thank you, Mr. Chairman. While I want to support Hon. Kirenga's Motion, I want to disagree with the area where he wants to put his amplification on the following grounds:

First of all, if we are going to amplify the cultural institutions in article 51, we could as well amplify the rest. This will bring inconsistency in the Drafting. I would feel happier if this amplification is brought under Article 64, as he had rightly pointed out and I would even go further to say that, I would even look at article 279 and bring it and put it in consonant with Article 64 in amplification of culture and cultural institutions. Thank you very much, Mr. Chairman. *(Applause)*

MRS. EGUNYU (Women-Kumi District): Thank you, Mr. Chairman, Mr. Chairman, when I put up my hand, I had sought a Clarification and I think it still stands because when Hon. Abu Mayanja talked of his reasons for including or amplifying culture here, he talked of cultural institutions as conferring special privileges and he felt that these privileges would be undermined by the provision which we have just passed that there would be no discrimination on bounds of birth and that was his major worry. I also wanted to submit that the recognition of culture in this Constitution is that, whereas you may have as a clan-head certain advantages arising out of your office, this should not include superiority in terms of human rights. That is what the Amendment on discrimination on birth and etc was all about - equality with regard to human rights. Because you cannot talk of equality and then you are talking of status in office and you merge the two. I wanted that clarification to come out clearly because as far as I am concerned the cultural institutions are well embraced in the term 'Culture' and article 64 (1) covers quite adequately what he wants us to have here. So, I wanted that clarification because it is bound to cause some confusion if we are to understand that

granting the right of non discrimination on grounds of birth is seeking to destroy cultural institutions, which I believe it is not.

THE CHAIRMAN: I do not think Hon. Mayanja said so. You see, what we passed yesterday, was a statement that a person shall not be discriminated against on grounds of birth. It is not the same thing as what was in the other Constitution which said, 'No person shall have an advantage or privilege by virtue of birth' Nor are we saying that a person shall have privilege or right by virtue of birth. What is now left is that in certain communities, their culture does allow for certain hierarchies - that does not offend the question of not being discriminated on grounds of birth as far as I can see. What they, I think, are trying to say is that they want something more explicit in article 51 and then amplified later on. Hon. Medi Kaggwa is saying actually amplification can be done in article 64 much better and even attracting the other provisions relating to cultural or traditional rulers. Now, those are opinions on the Floor. They do not affect the structure of the Amendment as it stands right now. I will hear one or two more speakers and then I think we vote. Yes, I can see many cultural interests.

DR. MIYINGO (Bukoto Mid-west): Thank you very much, Mr. Chairman. I quite agree with Hon. Kirenga's Amendment. But, however, I would like to stress that we should not delete further the word *culture* from (a) because if his Amendment is for amplification, then amplification does not remove the original, but will rather strengthen it.

THE CHAIRMAN: No, amplification not within the same Clause. Because amplification on culture takes a full Article. Here he is saying, let us list it and then go and amplify it in article 64. I think that is how I understand him to be saying.

DR. MIYINGO: Yes, it should be listed, Mr. Chairman.

MR. KAYIZZI (Kassanda North): While in support of Hon. Kirenga's Motion, I would only appeal and kindly beg him to accept and move this Amendment to Article 64 in order not to lose it here. Because to my understanding, when it is bounced, it would be very difficult to bring it back. Thank you very much. *(Applause)*

MR. SEBI (Koboko County): Mr. Chairman, while I do sympathise with Hon. Abu Mayanja on the issue of trying to amplify this particular Article, I would *(Interruption)*

THE CHAIRMAN: The Mover is Hon. Kirenga

MR. SEBI: Sorry, Hon. Kirenga. I would say that if we keep it where it is and amplify it, we shall make it contestable while at the same time here, we have feelings, for example, that traditional leaders should not be political, they should be apolitical and the moment we leave it here, we are opening them up for contest in a Court of Law while at the same time, we find that Article 279 on traditional leaders gives it a thorough treatment. Therefore, I would suggest that we leave it at the general and miscellaneous chapter rather than bringing it here where it might have to be watered down. Thank you very much.

MR. BIDANDI SSALI (Nakawa Division): Mr Chairman, you are talking of seeing so many cultural hands. Mr. Chairman, I am one of the people having a cultural hand in this. I would like to appeal to my Colleague, the Mover of this Amendment to first of all, judging by the general address by all Members of this House, nobody is opposed to culture, nobody is opposed to the cultural institutions as long as they are apolitical. I think in my view, it is wrong and in the long run, suicidal, if you remove the word 'culture' from the family of 'Life, liberty, dignity, education, security of the person, fair hearing and protection of the Law'. That is a very, very important provision. It is a very big family and I think it is wrong to remove that inclusion of culture in article 51 (a). Now, that is my first opposition to the Amendment. I am opposed to that aspect of the Amendment.

I am appealing to him that we take the second part which we all agree to, at least the cultural hand, to the right area. Let us go with our Colleagues, without trying to appear as if it is an issue where there is really no issue. As far as I am concerned, I have always gone with Prof. Kabwegyere here, that if you talk of culture, then you have included everything. So, it should be left in article 51 (a) but for the amplification, personally, I am appealing to Hon. Kirenga to agree that we take it under article 64. It will be doubly entrenched in the Constitution. Thank you *(Applause)*

MR. KIRENGA: In view of the fact that nobody is opposing my Amendment but only placement, I

would withdraw it at this stage and then bring it at the right time. *(Applause)*

THE CHAIRMAN: The Question is that Hon. Kirenga be given leave to withdraw. The Question had been proposed, that is why you have to give him leave. Granted?

HON. DELEGATES: Yes

THE CHAIRMAN: Okay. Now, that being so and seeing that we have stood over, 2 or 3 which according to the Committee Report, may come up as a separate Article under a general qualification. I would like to, now, put the question on Article 51 as amended. We amended it by adding that provision relating to employment in terms of profession and so on and so forth.

Now, I put the question that Article 51 as amended do stand part *(Interruption)* of the Draft Constitution.

(Article 51 as amended, agreed to)

THE CHAIRMAN: It is Article 51. There is no (2) now. The rest is the Draftsman's job. It is not a matter to be pronounced on by vote. Once we have voted on article 51 as amended, then the Draftsmen will now renumber. We do not have to waste time going over that.

Now, we move to Article 52. On Article 52 we have a number of Amendments. There are two Amendments. Could I ask the Chairman of the Legal and Drafting Committee whether they considered them not to be merged or to be put at the same time. They involve deleting but it is the insertion which is different.

MR. WACHA B: Mr. Chairman, the first Amendment which is being co-sponsored by Hon. Wasswa Lule *(Interjection)*

THE CHAIRMAN: Order! Order! Member for Maruzi, you are conducting a small seminar on the side.

MR. WACHA: I was saying, Sir, the first Amendment which was being co-sponsored by Hon. Wasswa Lule, Hon. David Magezi, Hon. Ben Wachha and Hon. Dick Odur seeks to abolish the death sentence. The second one as we looked at it, seeks to retain the

death sentence in respect to criminal offences. There is another one. This one is being sponsored by Hon. Malinga Lo Ojulla and Hon. Mulenga. My attention has been drawn to a third Amendment...

MR. MALINGA LO OJULLA IGNATIUS: Thank you very much, Mr. Chairman. My attention has been drawn to a third Amendment connected with the capital punishment which seeks to retain the death sentence in certain criminal offences. So, in effect, Sir, they are three: One which is the most extreme - to abolish it; the other one - to retain it generally on criminal offences; and the third one which specifies the type of criminal offences. That is the way we looked at it, Sir. Thank you.

THE CHAIRMAN: Now, these Amendments depart from the text. The one that departs furthest is one which seeks to totally abolish the concept of the death sentence or capital punishment and so I will give the Floor to Hon. Magezi.

DR. MAGEZI SUUBI: Thank you, Mr. Chairman. I beg to move that Article 52, page 19: *"The right to life shall be respected and protected and no Law shall prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose the sentence of death as a competent sentence"*.

THE CHAIRMAN: That is seconded I presume

HON. DELEGATES: Yes

THE CHAIRMAN: Okay. Could you speak to the Motion.

DR. MAGEZI: Mr. Chairman, in our Statute Books today, we have several cases for which death sentence is prescribed as a punishment. Mr. Chairman, I am fully aware of the loss and suffering that the victims of such cases suffer. In some cases it is loss of life, in others it is robbery with violence and some instances it is defilement of the minors. But, Mr. Chairman, when I consider punishment, I look at two aspects. First, the punishment should be able to reform the punished. In the death sentence, this position is not attained. Secondly, it should punish the culprit. But a death sentence, since at that time that person is losing his life, is not a punishment to the offender instead it is a punishment to the rest of family, relatives and friends. Thirdly, a punishment should be a deterrent to the rest of the people so that in fact people can shy away from committing such crimes. But Mr. Chairman and Hon. Delegates, I

am yet to be convinced that there is sufficient information to conclude that death sentence necessarily can deter people from committing these crimes. More so, when we have already stated that the right to life is an alienable, in other words, two wrongs do not make a right and consequently, even if you punish the society and the country, by carrying out a death sentence, you do not necessarily rectify what went wrong. There is no compensation therefore to the family that in fact originally suffered at the hands of the offender. Mr. Chairman, I would urge this House to consider life imprisonment not meaning the present 16 years that are presently prescribed in Law. But actual life imprisonment to be a better substitute to the death sentence in Uganda.

There could be an indication that if we abolish the death sentence, some people will take the Law in their own hands and they will mete out death to the suspects in the belief that if they go to prison, they will come out and commit the crimes yet again. But I think if a life sentence means life sentence, this sort of position may not be able to occur. I think we must develop the culture in our country where we know that to put somebody away from the public is not only going to be a punishment to the offender. But we hope that when this person is utilised in prison, he will be able first of all to reform and will probably render some service to this country through hard labour in prison. Mr. Chairman, I beg to move.

THE CHAIRMAN: The question is in terms of the Motion, as has been moved by Hon. Magezi.

MR. KATUMBAROBINSON (Kiboga County, West): Thank you, Mr. Chairman. I stand to oppose the Motion mainly for three reasons. The death sentence has been effective enough in reducing murder cases. So, if we drop it, we shall be licensing the minority criminals in Uganda in increasing their activities like armed robbery and murders. Secondly, Mr. Chairman, we will be setting a dangerous precedent between the bereaved family and the murderer's family in such a way that the bereaved family will be forced to appease them on their own. Thus reverting to the years where it used to be the only means of settling such cases. Thirdly, Mr. Chairman, from the economic point of view, this abolition of the maximum sentence from death to life imprisonment will create unnecessary ability to the Government in maintaining these murderers. *(Applause)* Even more or less it will increase cases of corruption, because given time, these murderers will want to buy their way out of prison. I beg to oppose, Mr. Chairman.

MR. ODUR: Mr. Chairman, it is said that capital punishment originated from primitive society which used to practice the philosophy of an eye for eye. This philosophy viewed in today's modern society is completely wicked. It does not have any corrective measures on the person who committed the crime. The person will die together with any lessons he or she may have learnt when the death sentence was passed. The relatives will have lost a possible useful person to their well being. What about the State which facilitated the death sentence - there will be no advantage accruing to the state and if anything, the state would have lost from the labour of the criminal if he or she was to be sentenced to life imprisonment. What about the bench? It is rumoured that some good Lawyers avoid the bench because they do not want to be faced with this wicked programme. What about the Chief Executive who as a matter of Legal requirement, must sign the death warrant? We really do not, but we could serve a lot of psychological torture because such an Executive could be committing murder. What about the hang-man? The hang-man himself is a murderer licensed by the State.

Mr. Chairman and fellow Delegates, to say that the death sentence has acted as a deterrent to possible murderers is false and has been proved so. The death sentence is not only wicked and cruel as a punishment but it is responsible for making human life as cheap as fish. In fact it is said that the state which has power to destroy human lives tends to disregard the lives of its citizens. So, Mr. Chairman, for these reasons capital punishment is actually abolished in many countries including a number of African countries. In those countries the capital punishment is being abolished, it is being done so through amendment of their existing constitutions. But modern constitutions which are being made in the modern times do not contain provisions for capital punishment.

Mr. Chairman and fellow Delegates, is the capital punishment always fair? Does the State always get the real culprits? The answer is not a straight forward. So, many murders have been committed, for example, in Uganda here, but they are completely unaccounted for. In fact, there is every reason to suspect that there could be some political motives in some of the murders. When there are changes of Government you are aware there are many political opponents who find themselves in prisons. Sometimes some of them face capital punishment. Re-

cently, the expansion of crimes that attract capital punishment to include rape and defilement of young girls will definitely need serious review and reconsideration because corrective measures for persons who commit such crimes may, in the end, be much more useful in taming our society. So, Mr. Chairman, I would appeal to fellow Delegates that let us make a modern Constitution. Let us drop the death sentence. I beg to move.

DR. KABAYO: Point of Clarification. Mr. Chairman, I seek clarification on whether the meaning as expressed in this Clause, of life also includes antenatal - life of unborn babies. And whether in the context of this life, abortion is also tantamount to the prevention of life. Thank you, Mr. Chairman.

MR. WASSWA: The question before the House is whether or not abortion is included in the right in causing death? Yes, it does because you take a decision to kill life. So, abortion would be taken into account.

MR. KIWAGAMA: Thank you very much, Mr. Chairman. The people of Bunya West have discussed this question of death sentence. People of Bunya West are opposed to the abolition of death sentence, vigorously so. To them they think and they are sure this punishment is a deterrent. It deters more people who would commit murders. The only thing is that it is not possible to measure exactly how many are deterred from committing murder but it has an effect on the community. The second reason is that although the death sentence does not compensate the bereaved ones, it creates or gives some mental satisfaction with the fact that, he killed our person - he is also dead. (*Applause*) It also discourages people - bereaved ones - from taking the Law into their own hands. Thirdly, it will discourage mob justice. If the community knows that the person who killed the other will eventually get away, they will not arrest whoever is suspected. They will go in for him and kill him. They will not take him to Court. They appeal to Members to uphold a death sentence as per our Law Books. I beg to oppose the Amendment.

MR. KUTESA PECOS: I support the Amendment. I am against this death sentence because revenge is bitter. I am opposed to it in that as someone said after changes of Government, some people are always put in prison, they are judged and then they are killed. But if, after a time, it is proved that what these people - supposing during our stay in

the bush, some of us were arrested and killed for treason! Some of us would not be sitting here. But most of you, I do not know what would have happened, but this Constitution would have been postponed for another few years. So, I think death sentence should be *-(interruption)-*

MR. MULONDO: Point of Information. Thank you very much, Mr. Chairman. I would like to inform the Hon. Delegate on the Floor that those people who were spared during the struggle were not spared because there was a State Law to prevent the killings, they were only spared through probably the will of God. Otherwise quite a lot of others were killed. So, this cannot be brought as an argument to *-(interruption)-*

THE CHAIRMAN: No, that is now going beyond the information.

MR. KUTESA PECOS: I wanted to inform Hon. Sabalangila that instead of now waiting for God to intervene, please let us put it in our own destiny. I was talking about arresting someone. In the heat of that emotion, you may kill him then later find out that it was not necessary. Also I do not even think when someone is killed, that is punishment. Because there are some people who committed crimes during the war who are in prison! I feel it is more teaching and painful when they stay in and see the work being done. It is better, if they had died they would not have known it. I am against the death sentence. Thank you, Mr. Chairman.

LT COL. SSERWANGA LWANGA: I thank you, Mr. Chairman, for giving me the Floor. I oppose the Motion, Mr. Chairman. I will first start by giving the information to Hon. Kutesa Pecos. The information I want to give him is that he should remember very well that when we were in the bush in 1982, there was a fighter called Zabulon who went to the wedding and killed the Bride and other two people. The Wananchi rose up - this is in the sub-county called Semuto, in the village called Mulule - the Wananchi rose up in arms and urged that since also UNLA soldiers were coming in the village and killing the people and also the *havekela* have started killing the people, NRA must leave and go away. For NRA to be saved, we had to try Zabulon and execute him. That is how NRA was saved which later on liberated the people of Uganda. For Hon. Kutesa to come here and argue, he has forgotten that history.

Mr. Chairman, to oppose the Motion, if we allow death to continue, we are going to have lawlessness. Death as a deterrent, as another kind of punishment has worked very well in the Army. But if you say that the soldier, will kill somebody in the village and will keep on rotating with his gun everywhere eating some food or kawunga in prison, we shall not even administer this Army. *(Applause)* For those reasons, Mr. Chairman, I appeal to all the Members to oppose this Motion of eliminating death.

MR. SSEMAALA KIRUNDU KIWANUKA KIMIZE: Thank you very much, Mr. Chairman. I would like to support this Motion because of a few reasons. Personally, I think that death penalty is barbaric. I do not think when there is somebody to kill, people just dress up very well and say, okay now you see we can go there and kill somebody. Because it is barbaric practice and this is not the practice that everybody would like. All of us sitting here - none of us will really take upon themselves if there was somebody to be sanctioned by State - none of us would like to do it. We always like to leave this to other people always State-demanded for the rest of their lives because their job is to kill other people. And this practice which is being done, in many States of the United States, jails are full of people who are waiting to be killed yet this practice although is being done continuously, it never deterred the committing of these crimes. So, it is not a deterrent. People continue to kill other people regardless of whether they will be killed in turn. The evidence I have is somebody comes up and says, you see, I am sorry about it. But somebody has already been killed. So, this does not in any way help us. It just makes us more barbaric in a way we treat other people. Perhaps, I would like to indicate that death penalty is more lenient than giving somebody life in prison because if somebody kills an individual - there are some people who have been documented to have performed some of the most despicable murders in the world: hacking people to death, not only one person but many. If you go there and just kill me instantly, there is no punishment in that. For him he just died right there, but if you left him in prison I think he can suffer more than just this instant death. So, Mr. Chairman, I stand to support this Motion very strongly. Thank you very much.

MR. OKANYA JAMES: Thank you, Mr. Chairman. I rise to neither support nor oppose this Motion.

THE CHAIRMAN: No. Then really we are going to make it very difficult.

MR. OKANYA: I have made up my mind. I am supporting the Motion. But why I had originally said I was for and against the Motion was essentially because the people who sent me to this House were divided on it. But looking at the circumstances under which a sentence of that nature is normally carried out. It gives me the feeling that nobody is actually happy to execute it for whatever reasons and if we are making a constitution that will last for years, I believe society through those years we shall live will learn from the pardon given to the people who would have merited the death sentence. There are however cases when several killers for example, may deserve a sentence of death. So, possibly this House has the task of determining a middle ground but essentially a death sentence is too extreme. We should be lenient to each other because I believe two wrongs do not make a right. So, I support the Motion. Thank you.

MR. SSEBAANA KIZITO: Thank you, Mr. Chairman. I support the death sentence. *(Applause)* Mr. Chairman, when someone commits a crime which deserves the death sentence, and that death sentence is administered, it may not be a punishment to him, but it is a way of getting rid of the bad element from the society. *(Applause)* Those Delegates who say that we give the man or woman life-imprisonment, if that man or woman is a bad element in society, wherever he or she goes, he can commit murder again. He can commit murder in prison. Therefore, we need to get rid of bad elements in society.

It is also a deterrent. I do not agree with those people who say that death sentence is not a deterrent. Life is sweat. People want to live and therefore, if they know that what they are going to do will deprive them of life, they will hesitate. Many people have hesitated. As a result of the fact that we have death sentence so many crimes which would have been committed are not committed. Therefore, Mr. Chairman, I support the retention of the death sentence. Thank you.

THE CHAIRMAN: Hon. Delegates, there is enthusiasm to speak on this Motion. It is a major issue. I think I will ask the Clerks to record the names of those who want to speak so that we go in a disciplined manner.

MR. ELLY KARUHANGA: Point of Procedure. Mr. Chairman, it seems to me that all the people who want to speak have therefore, indicated that they have got the position and that they would like to convince others, yet, they have already made the position. It seems that instead of asking everybody who has put up his hand, it would be better you put the question so that we can save time. Alternatively, Mr. Chairman, I know as a Member of the Legal Committee that Members have been sponsoring this in groups and certain groups have really approached us and you could see that they have formed a group opinion. If they still want to speak they can pick some leaders who can speak on their behalf. Mr. Chairman, during the sitting of the Legal and Drafting Committee, I advised our Chairman and I said that it was going to be very difficult for the Motion to be debated on the Floor. I suggested that we should have principle speakers on it who have researched for and against so that this can be a Debate and we take a decision. This was not acceptable. So, it will be better that we put the question. I therefore, move, Mr. Chairman, that you put the Question and if I am seconded, we proceed under Rule 21.

THE CHAIRMAN: There is a need for Members really to discuss this issue because it goes just beyond. The question of whether someone should be killed or otherwise is a very important issue.

MRS. BYENKYA BEATRICE (Women, Hoima): Thank you, Mr. Chairman. The people of Hoima district are in for the death penalty. When Members on the Floor speak, they tend to speak on the political side of it. People of Hoima are speaking as people of the villages. These people sell their goods and others kill them in order to get their money. That is what they are thinking of but not the political side. So, they believe that if the death penalty is on, it will deter people from killing each other. If only the death penalty is implemented, we would find that it is a deterrent and in that if it is effective.

The problem with the death penalty as it stands, is not effective. But let it be implemented, it will stop others from carrying on the practice of killing. So, we are in for the death penalty.

THE CHAIRMAN: I have a criteria.

MR. KINYATA GEORGE (Kinkize County): Thank you very much, Mr. Chairman. I stand strongly to oppose the Motion. Mr. Chairman, I

want first of all to inform you that my people from Kinkize East - when I visited them recently, I met 450 people seated together - we voted, like we are doing now 420 were in favour that the death sentence continue. Therefore I must continue with it. (*Applause*) Only 30 were against. Mr. Chairman, life sentence which some of the Members are proposing is only to encourage people to go to Luzira and do management by remote-control for their families. People who lose their husbands or wives, they lose them for ever and ever and the nation spends a lot of money on people in Luzira when they are managing at remote control their affairs at home. Mr. Chairman, my people are saying that once you kill somebody and you are identified and incriminated by the Law, you should be also killed. (*Applause*) Mr. Chairman, if you say you want to continue with life imprisonment, people will get their *jambiyas* and the rest and they will kill those who will have killed.

Mr. Chairman, the nation maintaining these prisoners in the prisons has got a large cost. And even some people have been killed in prisons because if you are a murderer even when you go to prison you can kill your friends there. It has happened and we know the names of the people who have died in prison killed by their fellow friends. So, Mr. Chairman, without wasting your time, I stand to oppose the Motion on behalf of my people and on my own behalf. Thank you very much.

MR. NASASIRA JOHN MWOONO (Kazo County): Thank you very much, Mr. Chairman. Mr. Chairman, I do appreciate that Clause 2 needs a bit of an amendment. I also appreciate the sentiments of Movers of this Motion. But I think this comes from some of the Laws that we have currently that provide for mandatory death sentence. For example, Mr. Chairman, a Law on defilement has been a controversial Law. We should not look at the current loss but first look at whether we should have death penalty or not for special cases. So, it is on that stand, Mr. Chairman, that I move to oppose the Motion.

I oppose it with the background knowledge that there are some other amendments which to me, I think, are more reasonable and I hope at an appropriate time when we consider them we shall pass one of them. One of such amendments is the amendment by Hon. Mulenga.

THE CHAIRMAN: Could you please desist from

debating subsequent amendment because if we carry this one, the other ones will not come.

MR. NASASIRA: Mr. Chairman, the sentiments of one of the Movers, Dr. Odur, that the Executive and the Bench find it difficult in my own respect I find that as part of your occupational hazard. I do not know whether hangmen do not enjoy their job. I do not know whether we have enough reasons to know that hangmen enjoy their job.

Finally, Mr. Chairman, I do not think people who murder others for money, for property should be entertained in prisons for life. One of the reasons the Movers gave was that you imprison somebody so that he can change. When does somebody change to come and be part of society when you have imprisoned him for life depending on what life sentence will be. On those words, Mr. Chairman, I oppose the Amendment.

MR. KARUSOKE (Ntoroko County): Thank you, Mr. Chairman. Life must have value and must have full value and whoever takes away that life has no less punishment than taking his own too. Therefore, I oppose in the strongest terms possible this amendment proposal. Mr. Chairman, capital punishment is supposed to be a deterrent not to the one who has murdered another but to society. That one who kills the other must be seen by society suffering death so that the society refrains from further murders in future. The punishment is not supposed to educate the one who murders but others who would be murderers in future.

Mr. Chairman, let me read a brief about what happens in other countries. For example, India. The Law Commission of India has insisted that having regarded the conditions in India to the variety of social up-bringing of its inhabitants to the disparity in the level of morality and education in the country, to the vastness of the area and to the diversity of its people and to the paramount need for maintaining Law and order, the country cannot risk the experiment of abolishing capital punishment. (*Applause*) India is one of those civilized countries today. So, those who say that the Law is archaic and originate from primitive societies of the past, are mistaken.

Mr. Chairman, capital punishment is also supposed to deter the relatives of those who are murdered to retaliate. How do you look at the situation where the criminal breaks into your house or into the house of

anybody, murders the head of the family, the mother leaving the children parent-less and this man tomorrow is walking free on the streets of Kampala or any part of Uganda. How do you look at such a man? Society looks at him as a ghost. So, why do you have to embarrass society by leaving a ghost among them. Remove the ghost and withdraw and take it where it is supposed to belong so that society can live without embarrassment.

Mr. Chairman, another example is, in America most recently, there was a proposal on the punishment of those who commit murder and those who, for example, drug-traffic and California approved death penalty for anybody who knowingly kills a police officer. Mr. Chairman, I do not know what sort of society we are talking of as being civilized and therefore they live above giving capital punishments. Is Uganda going to be the first civilized country in the world? Are we talking with innocent intentions? Mr. Chairman, there are so many States in America which have reinstated the capital punishment and I will not read all of them. Mr. Chairman, people who murder others must have no lesser punishment but to have their lives taken away so that the society can be clean of such evils. I beg to oppose, Mr. Chairman. Thank you.

MR. KINTU-MUSOKE: Thank you, Mr. Chairman. Mr. Chairman, I would like to add my voice to those who are opposed to the abolition of the death sentence. Mr. Chairman, the abolition of the death sentence is the ideal for which we should work for. But Uganda is very far from being an ideal society and we cannot behave idealistically when our people do not understand us. We are making this constitution for the ordinary man in the village; for wanainchi and we should only make the constitution which they can understand. If we make it for ourselves here, idealistically, they may not be able to follow what we are doing. Therefore, Mr. Chairman, since you have so many people who are to speak and I think we have as I said drawn positions, I propose that you put the question.

MR. WANENDEYA: Thank you very much, Mr. Chairman. What we are doing has proven what has been going on in other parts of the world when they have conferences. Mr. Chairman, with all due respect, I am quite cognizant of the fact that we are agreed to work the way we are doing now. But at this rate with all due respect, dear Delegates, we may take longer than what we expect. I would therefore,

request that you look back and see if we can get into Committees and everybody would be free to speak as opposed to getting amendments being done on the Floor so that the whole House becomes a Drafting Stage, if you want to call it that way, and therefore approving. I thank you, Mr. Chairman. I therefore, request that you would consider it and the Delegates as well. Thank you, Sir.

MR. RICHARD KAIJUKA: Thank you, Mr. Chairman. I wanted to come in as a student of management of time. Procedure - if you agree, Mr. Chairman, since we have over 50 people who would like to make their views known, and we are discussing a very important matter dealing with death penalty and for record it may be necessary for people to express their views. As a student of management, I would like to suggest that since there are no major principles of Law involved in the issue, either you are for death penalty or you are not, no doubt Lawyers can tell us Degrees of first, second, third degrees of matter. Those notwithstanding in order to manage this issue, I would suggest, Mr. Chairman, that since you have those names, people by indication would give their views whether they support or not without necessarily spending ten or twenty minutes debating the obvious principles. Thank you.

THE CHAIRMAN: What we shall do is this, there was a Motion moved that the question be put. I had not taken it because I wanted to give the Floor a chance to advise the Chair. Let us move on that Motion that the Question be now put.

(Question put and agreed to)

The Assembly went in Division

NOES

DELEGATE	ELECTROL AREA
1 Hon. Abaliwano Albert Brewer	Bugabula South
2 Hon. Abu Winotiya Dominica (Mrs)	Women - Moyo
3 Hon. Adimola Andrew Benedict	Gulu Municipality
4 Hon. Adio Winifred	Women - Soroti
5 Hon. Aliga Abdul	Obongi County
6 Hon. Akech Okullu Betty (Mrs)	Women - Gulu
7 Hon. Akello Grace (Ms)	Presidential Nominee
8 Hon. Akure H. Peter	Jie County
9 Hon. Amama Mbabazi	Kinkizi County West
10 Hon. Amandrua Paul	NOTU
11 Hon. Amanyanya mushega Nuwe	Igara County West
12 Hon. Apuun Longoli Patric	Bokora County
13 Hon. Aronda Nyakairima (Maj.)	NRA Delegate
14 Hon. Babu Edward Francis	Kampala Central
15 Hon. Bagarukayo M. Janet	Women - Ntungamo
16 Hon. Bagen Anthony M.S.	Bufumbira County West
17 Hon. Bageya George Patrick	Kigulu County North
18 Hon. Baguma-Isoke Matia	Buyanja County
19 Hon. Balvejusa Victoria Sekitoleko	Butembe County
20 Hon. Bamwenda Toterebuka Boneface	Buyaga County
21 Hon. Bantariza Francis	Buhweju County
22 Hon. Basaliza Henry Araali	FortPortal Municipality
23 Hon. Basoga Nsaju	Busiki County
24 Hon. Bateganya Mukuve Dick	Bukooli Central
25 Hon. Bidandi Ssali Jaber	Nakawa Division
26 Hon. Bikorwenda Ida Rubale	Women - Budibugyo
27 Hon. Bwambale Biira Loice	Women - Kasese
28 Hon. Bvaruhanga M. Fabius	Kitagwenda County
29 Hon. Byenkva Beatrice	Women - Hoima
30 Hon. Chebrot S. Chemeiko	Tingey County
31 Hon. Chepsikor Muhammad	Youth Eastern Region
32 Hon. Dhugira Esther Opoti	Okoro County
33 Hon. Elyau Mike Juventine	Kalaki County
34 Hon. Eresu Elyanu John	Kaberamaido County
35 Hon. Gumisiriza Guma David (Lt.)	Ibanda North
36 Hon. Jamwa Tezira	Women - Tororo
37 Hon. Jurua Alex	Vurra County
38 Hon. Kabayo John Patrick	Kassanda south
39 Hon. Kaberuka William	Ndorwa County West
40 Hon. Kabirisa Luberenga Hope	Women - Bushenyi
41 Hon. Kabugo Mesusera	Nakaseke County
42 Hon. Kabwegvere Tarsis Bazana	Igara County West
43 Hon. Kagawa Ssozi Medi	Kawempe Division South
44 Hon. Kagimu Kiwanuka M.P. Ben	Bukomansimbi County
45 Hon. Kajuka Richard Henry	Sheema County South
46 Hon. Kajara Aston Peterson	Mwenge County South
47 Hon. Kajubi Senteza William	Kvadondo North
48 Hon. Kakungulu Shannon	Presidential Nominee
49 Hon. Kalema Rhoda Nsibirwa	Kiboga County East

50 Hon. Kamanda Bataringaya Cos	Bwamba County
51 Hon. Kamuron Peter	Kongasis County
52 Hon. Karuhanga Elly	Nyabushozi County
53 Hon. Karusoke Constatune	Ntoroko County
54 Hon. Kasajja George Patrick	Bulamogi County
55 Hon. Kasole Bwere Lwanga	Buwekula County
56 Hon. Kasujja Aziz	Presidential Nominee
57 Hon. Katumba Robinson Matthew	Kiboga County West
58 Hon. Katurœbe Bart Magunda	Bunyaruguru County
59 Hon. Kavuma Steven B.K.	Kvadondo South
60 Hon. Kawanga John Baptist	Masaka Municipality
61 Hon. Kawooya Anifa	Women - Masaka
62 Hon. Kayizzi Asanasio	Kassanda North
63 Hon. Kayonde Isreal	Gomba County
64 Hon. Kibirango Gyagenda(Maj.)	NRA Delegate
65 Hon. Kiiza Besigye	NRA Delegate
66 Hon. Kintu Musoke	Kalungu East
67 Hon. Kinyata George Stanley	Kinkizi County East
68 Hon. Kirenga Emmanuel	Mityana County North
69 Hon. Kitembo Muleju George William	Burahya County
70 Hon. Kitariko K. Robert	Democratic Party
71 Hon. Kiwagana William Wilberforce	Bunya West
72 Hon. Kizito John Ssebaana	Makindye Division West
73 Hon. Kulany Gertrude	Women - Kapachorwa
74 Hon. Kule Muranga Kighoma Joseph	Busongora North
75 Hon. Kutesa Sam K.	Mawogola County
76 Hon. Kweronda Ruhemba	Kajara County
77 Hon. Kyemba Henry Kisaja Magomba	Junja Municipality
78 Hon. Langoya Timony	Lamwo County
79 Hon. Lubega Damiano	Rubaga Division
80 Hon. Lubega-Wagwa Swayibu	Butambala County
81 Hon. Lubulwa Migadde Umar	Katikamu South
82 Hon. Lukwago Gabriel	Kooki County
83 Hon. Malinga Lo Ojulla Ignatius	Usuk County
84 Hon. Maliro Gaston John R.	Mwenge County North
85 Hon. Masulu Musene Wilson	Manjia County
86 Hon. Masika George Jafeth	Mbale Municipality
87 Hon. Masiko Winfred	Women - Rukungiri
88 Hon. Matovu Byatike David	Entebbe Municipality
89 Hon. Mayanja Abubakar Kakyama	Busujju County
90 Hon. Mayombo Noble (Lt.)	NRA Delegate
91 Hon. Mazima Eliphaz	NUDIPU
92 Hon. Miyingo-Kezimbira Lawrence (Dr)	Bukoto Mid-West
93 Hon. Mugisha Muntu (Maj. Gen.)	NRA Delegate
94 Hon. Mugyenvi Posiano R. (Dr.)	Isingiro North
95 Hon. Mukasa Muruli Wilson	Nakasongola County
96 Hon. Mukiibi Benigna	Women - Kabale
100 Hon. Mulassanyi David John	Rubanda County West
101 Hon. Mulindwa Birumumaaso	Bukoto West
102 Hon. Mutagamba Lubega Mary	Women - Rakai
103 Hon. Muyiisa John Chrizestom	Bujumba County
104 Hon. Mwaka David	Nwoya County
105 Hon. Mwesigye Ruhindi Hope (Mrs)	Women - Kabale

106 Hon. Mwendha Faith (Mrs.)	Women - Jinja
107 Hon. Nankabirwa Sentamu Ruth	Women - Kiboga
108 Hon. Nasasira John Mvooono	Kazo County
109 Hon. Ngobi Mathias	Presidential Nominee
110 Hon. Nsangi Kakembo Mary	Women - Kalangala
111 Hon. Nsibambi Apolo (Prof.)	Presidential Nominee
112 Hon. Ntabgoba Jeninah	Women - Kisoro
113 Hon. Obel Onegi	Jonam County
114 Hon. Ogwel-Looto Sammy	Moroto Municipality
115 Hon. Okorimoe Janet	Women-Kotido
116 Hon. Olega Ashraf	Aringa County
117 Hon. O'Let Charles Christopher	Erute County South
118 Hon. Omute Julius	Kumu County
119 Hon. Ondoga Amaza (Maj.)	NRA Delegate
120 Hon. Oneti Batia Samuel A.B	Maracha County
121 Hon. Otafire Kahinda	Ruhunda County
122 Hon. Owiny-Dollo Chigamoy Alfonse	Agago County
123 Hon. Rainer Kafire Juliet	Women - Pallisa
124 Hon. Ruhakana Rugunda	Kabale Municipality
125 Hon. Ruzindana Augustine	Ruhama County
126 Hon. Rwabita Deo K	Ibanda South
127 Hon. Sabiiti Jack	Rukiga County
128 Hon. Sebalu Kennedy Mike	Youth-Central Region
129 Hon. Sebi Data Haroun	Koboko County
130 Hon. Sempa Victoria Esther	Women - Luwero
131 Hon. Seruwu-Bakoja Beatrice	Women - Mpigi
132 Hon. Ssemakula Nakabugo K. Hawa	Women - Mubende
133 Hon. Ssentongo Theopista	NOTU
134 Hon. Sserwanga Lwanga	NRA Delegate
135 Hon. Tirusasira Katogongole Dafasi	Bugabula South
136 Hon. Tumukunde Henry	Rubabo County
137 Hon. Tumwine Polly Katahwa	Youth - Western Region
138 Hon. Turyahikayo Alice K. Rwahwire	Women - Kabarole
139 Hon. Wagira Moses P.	Kibuku County
140 Hon. Wambede Seth Massa	Bungoko North
141 Hon. Wamulongo Wahibi Alupakusadi	Bunva East
142 Hon. Wanendya William Giboni	Budadri East
143 Hon. Zziwa George William	Kawempe Division North
144 Hon. Zziwa Nantongo Margaret	Women - Kampala

AYES

1 Hon. Advebo G. Cosmas	Kwania County
2 Hon. Atwoki Ambrose	South-Northern Region
3 Hon. Egungyu-Asemo Fiona Lucy	Women - Kumi
4 Hon. Etuku-Onyok David	Moroto County
5 Hon. Kimera Ndikabona Rashid Aman	Bunya South
6 Hon. Komakec Leander	Aruu County
7 Hon. Kutesa Pecos Onessmus (Col.)	Kabula County
8 Hon. Lule Wasswa	Rubaga Division North
9 Hon. Magezi Daudi Suubi	Jinja Municipality East
10 Hon. Mulenga N. Joseph	Democratic Party
11 Hon. Mwandha Patrick John	Bukooli County North

12 Hon. Nsubuga Nsambu Yusuf	Makindye Division West
13 Hon. Nyai Dick	Ayivu County
14 Hon. Odur Dick	Dokolo County
15 Hon. Ogola Akisoferi Michael	West Budama South
16 Hon. Ojok B'Leo	Kioga County
17 Hon. Okanya James	Butebo County
18 Hon. Okeny Tiberio Atwoma	Chua County
19 Hon. Okula O. Charles	Soroti County
20 Hon. Omara Atubo Daniel	Otuke County
21 Hon. Omeda Hebron O'Max	Serere County
22 Hon. Owor William Charles	Aswa County
23 Hon. Rwingwegi Sam Fiester Surf	Padyere County
24 Hon. Ssendaula Gerald	Bukoto South
25 Hon. Tinyefuza David	NRA Delegate
26 Hon. Wacha Ben	Oyam County North

ABSTENTIONS

1 Hon. Atamvaku Zubairi Nasseem	Arua Municipality
2 Hon. Atim Ogwal Cecilla (Mrs.)	Lira Municipality
3 Hon. Okullo-Epak Yefusa (Dr.)	Oyam County South

THE CHAIRMAN: Please resume your seats so that we proceed. The results of the division are as follows: There were three abstentions. Three people abstained and the Motion was to delete Article 52 and replace it with what appears on the amending sheet which has been circulated.

In support of the Motion - 26; against the Motion 144; therefore, the proposition was negatived and the Motion was defeated.

MR. WACHA BEN (Oyam County North): Thank you very much, Mr. Chairman. It looks as if there is a move to sub-divide article 52 into three sub-Articles. Sub article (1) giving a general revision, sub-article (2) capitalising and sub article (3) providing for the intent of abolition of capital punishment. I have that piece of paper for the proposed amendments and we have discussed it with the owners.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, first of all, if I may explain the text you refer to, as dated today, it is really separating to sub divide article 52 to three sub articles, sub article (1) giving a general provision and sub article (2) capitalizing and sub article (3) providing for the intent of abolition of the capital punishment. I have that piece of paper for the proposed amendment, and we have discussed it with the owners.

THE CHAIRMAN: Okay, I will give the Floor to Hon. Mulenga to move the amendments.

MR. MULENGA: Mr. Chairman, first of all, if I may explain or urge the explanation, the text you refer to as dated today, is really separating the amendments. Article (52) has two Clauses and the first amendment which is to be moved by me - Hon. Mulenga, is amendment to Clause (1). The next one is amendment to Clause (2) and the this one is an addition. Does that, Mr. Chairman, clarify little better.

In fact initially, they were represented like that and were put before the committee, but the two are different. One is amending clause (1), the other one amending Clause (2).

THE CHAIRMAN: Okay, the other one is adding a provision by the way of clause (3). Let us proceed with a proposed amendment to clause (1) we dispose of that. They are not related, so that disposing of ones does not necessarily dispose of the next.

MR. MULENGA: No, that is right.

THE CHAIRMAN: So, we take clause (1) first and then Hon. Malinga you have the Floor of course, after you have formulated, if it is seconded then we shall open debate.

MR. MALINGA: Thank you, Mr. Chairman, the proposed amendment on the sheets circulated today, is to set better the law. What is really stated is this, that no person shall be deprived of life intentionally, except in execution of a sentence passed by a court of competent jurisdiction and confirmed by the Highest appellate court for a criminal offence under the laws of Uganda of which such person has been convicted in a fair trial. This is the position already today, it is not seeking to create anything new, but it is to entrench it in the constitution. It is however, important to emphasise that, a person who stands to be sentenced to death should be given a full and fair trial. Fair in all respects.

THE CHAIRMAN: No, now you are talking to the Motion before we frame it. Is it seconded? It has been seconded. Now the question is that - I think this sheet has been circulated. The question is in terms of the formulation appearing as under clause (1) of article 52 and as read out by the Mover. Please, stick to the Motion.

MR. MALINGA: Thank you, Mr. Chairman. As I was saying, this is already the position but it is necessary to entrench in the constitution this particular provision because, a person who stands to be sentenced to death, as already been said in debating the last amendments, that death sentence is such a serious thing, it is such final that once it is executed, you have no chance to correct what has happened. So, this person who stands to be sentenced to death should be tried by courts of competent jurisdiction and after he is convicted by that court, he should be given an automatic right to appeal up to the highest court against that conviction, so that his case is examined by the appellate courts. As of today our position is that most of the old cases carrying death penalty, are tried by the high court. So there is only one court to which you can appeal, and that is the Supreme Court. But may be the Constituency Assembly in its wisdom creates a second appellate court or in future, a second appellate court might be introduced. So, that is why I am saying that he should be given a chance to appeal up to the highest appellate court. The appellate court must be a Ugandan court, it can no longer be to the privy council. So, Hon. delegates, I do not really have much to say because I am really re-instating what this amendment seeks to put into law - that is the position already. I am not trying to justify anything because this is the position already. In fact, once a person is convicted, the prisons authorities just pass

him a form to sign giving notice of his appeal. I just want to have this stated in law because it is not stated anywhere. But otherwise it happens as a matter of court in the judicial system. I beg to move.

MR. KARUSOKE: Point of clarification. Mr. Chairman, I am seeking clarification from the Mover. This is in connection with the last words in that amendment, and the words are: *convicted in a fair trial*. I want clarification with regard to fair trial. We are talking of someone being tried in a court of competent jurisdiction and confirmed by the highest appellate court. Now, is there room for these courts not to offer fair trials? Is there room? Are we saying in other words that sometimes these courts cannot offer fair trial? I want clarification, Mr. Chairman.

THE CHAIRMAN: I think you better clarify because the Member is saying, is there a situation where you can say, let us give him a fair trial and shoot him?

MR. MALINGA: Mr. Chairman, I think it is possible not to receive a fair trial. That is why we provide for appeals. So, we want to know that, it should be clear that a person has been given a fair trial. This will give the appellate court power to examine - whether looking at all other things, you might know somebody has committed the offences but you can still quash the sentence for the time being on the grounds that, the person has not received a fair trial. 'Justice must not only be done but it must be seen to done'. That is what we mean by Justice. If, for example, we have a Judge who takes the seat and starts taking position, whatever, whether the judge arrives at the correct position that the person committed a crime of murder, it will be regarded as unfair because the judge was biased from the words "go". So this is what I see.

AN HON. DELEGATE: Further clarification. Thank you, Mr. Chairman. I am seeking further clarification from the Movers on the question of the sentence to be confirmed by the highest appellate courts. The way I understand, their Motion seems to suggest that, even after a court of competent jurisdiction has taken a decision, and the convicted person has chosen not to appeal, then the sentence will not be executed, if it is written in the way it is. Because it says that, except in execution of a sentence passed by a court of competent jurisdiction, and confirmed by the high appellate court, What if the convicted person who in any case has been

convicted by a court of competent jurisdiction chooses not to appeal, then what would happen in that situation? I am seeking clarification on that one, Mr. Chairman.

MR. KAGGWA SSOZI: Further clarification. I want clarification on the Mover of this Motion. First of all, they use this, 'passed by court of competent jurisdiction' and I wanted to know whether we have in this country courts which are not of competent jurisdiction. Two, I want to know whether they are suggesting that the appellate court should have a mandatory review of a sentence passed by a court of competent jurisdiction and the person has opted not to appeal.

THE CHAIRMAN: Okay, that is more or less the same, except on the question whether he can have an incompetent court.

MR. MULENGA: Mr. Chairman, thank you. The point raised by Hon. Besigye is quite pertinent and in fact that is the intention. Hon. Malinga did explain that in practice, once a person is convicted and sentenced to death the appeal is automatic, but it is automatic in practice only, and we want it or we are proposing that it be put in the law. And the reason is, you may have a situation where a man is convicted of murder and he just falls back, like we read recently of two boys that were convicted (about 18 years old) and were laughing in court when they were sentenced. Through ignorance, they may not appeal, but before you execute such a grave and final sentence, it is only proper that a second court has a look at the trial and confirms that the trial was fair and the judgement was correct and the sentence should be carried out. It is because of the gravity of the sentence that we are seeking to get even that constitution to provide for that automatic appeal.

For the question raised by Hon. Kutesa - yes, court martials - if we agree that they be provided for in the constitution, we also have the appellate system and the highest court in that system would be the one applicable. That is why we have not thought to identify the court by name. It is the Highest Court. So, if from court martial, you go to court martial - general court martial then appellate court martial, and there is provision for yet another depending on what is provided where that system of court martials go, the idea is that, the highest court in that system. What is intended is to provide that only a court which has a jurisdiction to try that case, and pass such a

sentence would be respected. If some Magistrate court or an RC court sitting somewhere and thinks it has power to pass sentence of death that sentence is not being protected by this.

Mr. Chairman, may I also add with regard to, I think the question was asked Hon. Karusoke, about fair trial, I wanted to add that this is not a new imposition, because it is already provided for on the draft article 51 Clause (1). So, fair trial will be incorporated not as an amendment but as a continuation. I thank you, Mr. Chairman.

MR. KAWANGA JOHN: Thank you very much, Mr. Chairman. I support the Motion. First of all, it is enacting a practice which has been on but I think it is also taking into account certain things which went wrong in our judicial history. Hon. Members may have forgotten that in this country we had what were called military tribunals which sentenced people to death by firing squad and immediately executed those people without giving them the chance of appeal. With this kind of provision, you would have something which ensures that whoever, is doing that knows that he is doing it against some written law. Those of you who are here know that people who were tried by these tribunals were told that you have the right of appeal to another court which was never there anyway. So that even the chance of appealing was never in practice and people were killed without their cases being examined.

Of course, the other thing about competent jurisdiction should also look into the competence of the people who try others. In cases of the people who manned the military tribunals, people like "Lt. Kill me quick", or "Lt. Col. Juma Butabika" who sat in justice to pass sentence of death and went ahead to execute very innocent and very decent Ugandans in this country - we want this kind of provision to ensure that, that kind of thing does not happen again. I support the Motion.

MR. NYAI DICK: Thank you, Mr. Chairman. I support the Motion and I do not think I am going to take much time giving reasons. The Motion as formulated is very reasonable. But I take exception on one point, Mr. Chairman. If the cosponsors of this Motion could may be agree with me putting the word has been convicted in a trial after confirmed by the highest appellate court, would seem to imply that, there will be another court above the highest appellate court. I would think, Mr. Chairman, if the

cosponsors were agreeable, the sentence should read that, *"The execution of a sentence passed by a court of competent jurisdiction for a criminal offence under the laws of Uganda, of which such person has been convicted in a fair trial and confirmed by the highest appellate court s"*. Then, Mr. Chairman, I think that would have a very good and deliberate formulation which would be acceptable to all of us. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Dick Nyai, the student of the English language I understand so.

MR. DICK NYAI: Mr. Chairman, thank you. I am not a student of the English language. I would have no quarrel where the words are placed but the way he puts it raises a question. When you say, has been convicted - such a person has been convicted in a fair trial and confirmed by an appellate court, the appellate court would seem in that sense to be confirming the person rather than the sentence. But this is something that can be dealt with by the Technical Committee to make sure that we are using the correct words. Otherwise there may be need to say, such a person has been convicted in a fair trial, and the sentence has been confirmed by the highest courts. But this is something lawyers *-(Interruption)-*

THE CHAIRMAN: I think we agree on the substance.

MR. MULENGA: Yes.

MR. KAGIMU KIWANUKA: Mr. Chairman, I would like Hon. Mulenga to clarify about these court martials. We know very well that the NRM Government has managed to have a very disciplined force because of these tribunals, court martials. You see a soldier is a soldier and I think if as you can recall the speech of Hon. Lt. Mayombo, I think if they had not done like that, I do think we would not have a disciplined force. Now, for the civilians, I do think that, I do not know whether we are to include everything here because Hon. Mulenga talked of the court martial. He said that for the military if we differentiate that, it will end again in another court martial which is a military court. But otherwise, if we do not differentiate between the two, I think given our history in Uganda, without the strong arm of the NRM administration, I think the forces will behave like in the past. Thank you, Mr. Chairman.

DR. KABAYO: Thank you, Mr. Chairman. I am not a lawyer myself but I seek indulgence from the Lawyers who would advise me, especially the Movers of this Motion whether the prerogative of mercy which I often hear of in the Press whether it is covered under this, or what provision is provided for this. Thank you, Mr. Chairman.

MR. WASSWA LULE: Thank you very much, Mr. Chairman. I support the Motion as it provides adequate safeguards before taking life. In our judiciary it is so easy to make mistakes in judgement, and if life is simply taken at the whims of a single individual, it is very difficult to rectify the mistake after that. The emphasis on due processes, I also note and I welcome it, because due process are those, many of them are stipulated in article 58, that guarantee a fair hearing. Hon. Kagimu asks about the military, and particularly in military courts, it is important that there is due process. There have been cases of arbitrary deprivation of life in the military and I can quote one case straight off the top of my head, one individual by the name of John Bosco Muhwezi who was executed in Mbarara. He was accused by the Unit Disciplinary Committee of the army and they proceeded with shooting. Those courts which are in the army, due process as stipulated in the constitution is not strictly adhered to. They tell these people who are accused that they can have a defence, and the army provides a defender for them. But an independent defence Lawyer would be welcome going through the appeal process rather than simply one court passing a judgement and then executing somebody. If we have courts acting like that, it is possible for a few individuals to sit down and in order to cover up a crime, they can execute somebody. Yet, an appeal process means that, there is a review by an independent set of individuals.

LT. MAYOMBO: Point of information, I would like to inform Hon. Wasswa Lule that disciplinary committees in the NRM do not have the jurisdiction to try and pass sentence of death. Two, Statute No. (3) of 1992, that is the NRA Statute provides for a UDC, a division court martial, a general court martial, and a court martial appeal in case an aggrieved party would like to appeal. So, we have structures of appeal within our establishment, Mr. Chairman. Having said that, I would like also to oppose the Motion, Mr. Chairman.

THE CHAIRMAN: But you came for information

LT. MAYOMBO: Mr. Chairman, it is for the benefit of Hon. Malinga who was my lecturer in Law. Mr. Chairman, while I know that, at law, appeal is a creature of statute, I would like to go ahead and oppose this Motion for a number of reasons. One, is that, Hon. Kiiza Besigye mentioned a point of somebody who does not want to appeal. To appeal, you must either appeal on a question of fact or on the question of Law. By saying that either the judge did not apply the facts properly - he did not apply the law properly; or he did not direct himself to material facts. What if you are satisfied with the direction - how he directed himself with the material facts and also satisfied all these applications of law on the facts, why would you appeal. You are satisfied as an aggrieved party. That is the first point why I oppose the Motion.

The second, Mr. Chairman, is the question of fair trial. I am satisfied here that, article 58 provides for presumption of innocence; provides for a lawyer of your choice; and provides for interpretation in language the accused understands. So, I am satisfied that there is fair trial provided for under article 58. And finally, Mr. Chairman, I would like to say that, there are certain offences *-(Interruption)-*

MR. BEN WACHA: Point of information. Mr. Chairman, I do not want this House to be misinformed. So, I am trying to inform Hon. Mayombo that, what is now being presented before the House has actually been in practice and an acceptable practice in our colonial justice. That is, where a person is convicted of an offence which is punishable by death he has an automatic right to appeal. The issue does not arise where whether he wants to appeal or not, he has a right of appeal automatically to the Supreme Court. And that is why I think the cosponsors of this Motion are trying to put in our constitution.

LT. MAYOMBO: Mr. Chairman, to the best of my knowledge, it is a duty. It is the right. There is right of every citizen in this country to appeal currently and it is a practice in this country. But I would like to finally finalize my contribution, Mr. Chairman, by talking about certain offences in the army which if you wait for ten (10) or twenty (20) years, you would undermine the operation efficiency of this discipline. So, I am of the view that unless the definition of courts in this proposed amendment excludes a disciplinary court or a service court, I would then support the Motion. But otherwise, I stand oppose the Motion, Mr. Chairman.

MR. WASSWA LULE: As hon. Mayombo said, it may not have been discipline committee, but whatever arm of the army it was, it was some form of court. Because as I said, he did not meet those standards, whatever court in the army passed sentence on that individual and then went and shot him arbitrarily like that, whatever it was, that one does meet standards, and the statute at the time was not in place. I support this Motion so, that we do not reverse back to the situation before that statute was in place. Those standards should have been met even at that time. Thank you very much, Mr. Chairman.

LT. COL. SERWANGA LWANGA: Point of order. Is it in order for Hon. Wasswa Lule to call the military courts which are established under Statute No. 3 of 1992, Kangaroo courts. Is he in order Sir?

THE CHAIRMAN: No, you did not hear him properly. He said, the courts he is making reference to existed prior to the statutes. In other words, he is prepared to except that the statute corrected the situation. So, you did not hear him properly.

MR. MALIRO GASTON JOHN: Thank you, Mr. Chairman. I support the Motion for the following reasons. First, the amendment does not change the meaning or the substance of the text as contained in the Draft Constitution. Secondly, the amendment does give more substance in that, it provides for competence of the court. Any court could be left to maybe try such a case. I think this right of appeal being contained in the constitution, is really very good. Although we are being told that in practice people have always had automatic right to appeal. If somebody was denied that right he would not seek redress anywhere, but in this case, once it is entrenched then, it is a right. Whether this person applied that right or not, but that right is existent. Therefore, Mr. Chairman, I support this Motion.

MR. NSUBUGA NSAMBU: I would like to support the amendment provided the Mover of the Motion can show if he can reduce the rigidity in the amendment. As the amendment starts at the moment, it appears, it would be criminal to cause such death. Secondly, if there is no safety valve on that amendment, it means even Parliament will not be able to provide for them.

MR. ERESU ELYANU: Point of clarification. I would like the speaker on the Floor to clarify me to what he means on the concept, certain death of necessity. I do not quite understand what he means when he says they are certain deaths which could take place out of necessity.

MR. NSUBUGA NSAMBU: We have cases where a Doctor has got to choose between two people who should be killed and leave the other one alive, and so forth. But as the section now stands, it appears we are referring to courts alone and there will be no chance to discuss these matters before the Doctor decides. So, we want to protect the position of a Doctor if he did it.

MR. MULENGA: Mr. Chairman, the Motion as cosponsored by Hon. Malinga and myself had no intention of legalising abortion, and therefore, if Learned Hon. Nsambu would like to move his own, I would rather he does so without using this one. May I also take this opportunity, Mr. Chairman, to clarify to Hon. Mayombo that there is no need to remove or exempt the application of this article or Clause from military courts. Because military courts are being provided for in this constitution. If you look at article 113, clause (4) at page 47 very useful provision: *"A reference in this article to a conviction or imposition of a punishment, penalty, sentence or forfeiture... by a court martial or other military tribunal"*. Mr. Chairman, he mentioned that in the case of army, there are sentences which for operational reasons must be carried out quickly. That is why there is provision in the law to have separate courts for the army. All we are dealing with here is to say that a court of competent jurisdiction be it the High Court dealing with civilians or the military court martial. That sentence should be subjected to appeal so that there is a second check to make sure that before the sentence is carried out, it is confirmed by an appellate. And in the system of the military courts, there is appellate court as he himself has confirmed.

Thirdly, Mr. Chairman, I have had benefit of advise from the Chairman on Technical Committee on the proposal brought by the English Hon. Dick Nyar, and, I am able to rephrase or rather recast the wording. If you would wish me to do so now...

THE CHAIRMAN: Could you please, so that we go on to vote.

MR. MULENGA: Much obliged. It should now read, *"No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court"*.

THE CHAIRMAN: That is the same language but reworded. I now put the question.

(Question put and agreed to)

MR. MULENGA: Mr. Chairman, I move that clause (2) of article 52 be amended in order that, the circumstances in which the death penalty may be applied is limited. It is proposed, Mr. Chairman - that is the general idea and the essence is to provide that death penalty shall be applied only in respect of criminal offences involving loss of life.

THE CHAIRMAN: Is that seconded? Fine. Now he is saying that the text in the Draft Constitution was saying, *"except in very grave circumstances acceptable in a just and democratic society"*. They are proposing to replace that with, *"except in respect of a criminal offence involving the loss of human life"*. That is the change which is to be effected.

MRS. AKECH OKULLU: Point of procedure. Thank you, Mr. Chairman. Before we go on to clause (2), of article 52, there is an amendment which I had moved on clause (1) of article 52. So, I thought it would be in order for this amendment to be discussed first before we can go to clause (2) of article 52. Thank you, Mr. Chairman.

THE CHAIRMAN: But we do not have it. Do we?

HON. DELEGATES: Yes.

THE CHAIRMAN: Was it seen by the Legal and Drafting Committee?

MR. BEN WACHA: We have seen it, Mr. Chairman. Although we did not discuss it in the committee, I think is a necessary amendment.

THE CHAIRMAN: What does it say?

MR. BEN WACHA: It says, that we add at the end of the sub article (1) the following: *"Provided no woman shall be executed when pregnant."*

THE CHAIRMAN: Now Hon. Mulenga was on the Floor to move his amendment on 2, but this one comes in as one - I mean as one before that. I think we give the Floor to the Lady to move that amendment.

MR. OMARA ATUBO: Mr. Chairman, I have looked at the amendment on this question of execution of a pregnant woman, but I would advise the House or the Chair that we differ discussion on this amendment because I think there is already a provision under the Prisons Act which caters for this. So, it is superfluous but to be on the safe side we can do research and come back to it on Monday. But it is already catered for, you do not execute a pregnant women under the statutes of Uganda.

THE CHAIRMAN: Because you would be executing another person who is not guilty.

MRS. AKECHOKULLU: Thank you, Mr. Chairman. The law today is that, you should not execute a pregnant woman. Likewise for children. But it would be better to include it in our supreme law because then it would outlaw any other laws amending what is already in practice. And it would guarantee that all laws from today onwards, will follow that trend.

I wanted us also to consider children - no death sentence for children below 18 and for pregnant woman. Thank you.

CAPT. BABU: Mr. Chairman, I would like to seek your guidance here and probably some of the constitutional lawyers can help here. Mr. Chairman, I have always had the belief that the constitution has basic laws from which other laws come from. And as we talk now, there are some in this country who are considering carefully most of the things we are talking about. If we had to put everything that we want in the constitution it will be as bigger as this House. *(Applause)* My request is, Mr. Chairman, that even the lawyers who are constitutional lawyers should help us that we come out with the basic law and we give the Legislature the power to make other laws from the constitution. But if we go on like this, we have got so many laws we would like to include here to be protected. But these laws already exist in Statutes and Acts and if some of them are repugnant, those are the ones we should look at.

THE CHAIRMAN: Okay, we take note of that. Let the Hon. Member move her amendment, we shall have limited reaction then we go on to pronounce ourselves on it.

MRS. AKECHOKULLU: Thank you, Mr. Chairman, for that ruling. In moving this amendment, I

wanted to seek protection for the unborn child who is innocent even if the mother is actually guilty. If the state allows this, then it is tantamount to murdering an innocent person. I was also aware that a law actually exists that states that before a person or a condemned person is executed, that person is physically checked to find out whether that person is actually physically well so that he can face the death penalty. To my mind, it looks like this physical check-up is really to ascertain whether the person is physically okay, but not to find out whether this woman is pregnant. I am talking as a woman who has gone undergone several pregnancies and sometimes, it is difficult for a woman to know that she is pregnant until maybe after one month. And actually if it is not enforced by the supreme law that before a woman is executed, she is specifically checked for pregnancy, then there is a danger that we could actually execute a woman who is pregnant but does not even know herself that she is pregnant. Thank you.

THE CHAIRMAN: The question is in terms of the Motion. Let us get contributions.

HON. DELEGATE: Thank you very much, Mr. Chairman, for giving recognition to me after so many days. Mr. Chairman, I stand to oppose the Motion as moved by Hon. Betty Okullu on some simple reasons. First of all, I wish to challenge the Hon. Mover of this Motion to state or to give us information as to whether there is any statistics available or any information available to confirm that in our history in this country, some pregnant women or ladies have been subjected to death penalty. Because as far as I am concerned, we are making a constitution based mainly on our experience in this country, and in our experience it is known that in courts of law, competent courts of law, no any woman has ever been sentenced to death, as far as I am concerned, who is actually pregnant. So, I would like to join my voice to what Hon. Babu said that, let us not come out with a voluminous, with a forest of these words when the basic principle is already taken care of in other relevant acts as passed by Parliament. Thank you, Mr. Chairman.

MR. RINGWEGI: Thank you, Mr. Chairman. I was trying to say, Mr. Chairman, that the intended amendment is actually idle. The House has already been informed, Mr. Chairman, that the practice - and not only the practice - that there are provisions in our laws which cater for that. I also want to add, Mr.

Chairman, that we are not here trying to write a criminal procedural court, or a criminal penal code whereby we should codify all offences that we imagine and how they should be executed.

I want to associate myself with Hon. Babu, that we are trying to make a basic law and other laws should only flow from this basic law. So such amendments which are already catered for by other laws should not be brought before the House, and if they are brought before the House, we should reject them. Thank you, Mr. Chairman.

MAJ. TUMUKUNDE: Mr. Chairman, I do see a situation where we are likely to kill very, very fundamental amendments which are so vital to this constitution and to our future law. Article 57, "No person shall be subjected to unlawful search..." Why don't you allow something that talks about destruction of life in a constitution - possible destruction of life by a Parliament that may have some form of oversight. Mr. Chairman, you saw the controversy on life, and how long we had to debate. I request that, this be put in the constitution, and if we are in for having constitutional basic laws, we can reduce where else it does not matter so much. That is all I had to say, Mr. Chairman. So I support the Motion.

PROF. SENTEZA KAJUBI: Mr. Chairman, I would like to propose that the question be put.

THE CHAIRMAN: Well, this is a matter which seems to be at a level where I should put the question. Let us vote on that if that is the wish. That the question be now put.

(Question put and agreed to.)

THE CHAIRMAN: Now we are voting on the amendment of Hon. Akullu, that article 51 (1), be amended. And we are putting a proviso 52 (1) - you remember the one which we have just passed - then we are putting a proviso to the effect that, pregnant women should not be executed but the language can be sorted out the drafting team.

(Question put and agreed to.)

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, in moving this Motion, I have in mind the importance that we want to attach to life. We have already passed the Clause about protection of our fundamental rights, and the first one is the right

to life. Therefore, it should be only in very exceptional circumstances that we justify deliberate taking away of life. Death penalty is a deliberate act by the State or by society to kill a person. Therefore, it is important to be clear that the reason for killing that person are beyond reproach, are justified. In my view, and in the view of my Colleague, the co-sponsor, we think that the only justification, there can be for taking away the life of a person is where that person has caused loss of life, where he has violated the right to life of others. Otherwise, other punishments can be used for any other offences. Today, Mr. Chairman and fellow delegates, we have several criminal offences that carry the death penalty. In addition to murder, we have such offences as robbery, aggravated robbery, offences of smuggling with arms, defilement, rape, treason and so forth. While all of them are grievous or grave offences, the question that we want this House to consider is whether all of them deserve that penalty. Remembering that the death penalty is totally irreversible. You punish someone by killing him and that is finished. Earlier on, while we were carrying on the other wider amendments, there was mention of wanting that the sentence of death is intended to get rid of bad elements from society. I think that is a dangerous measure; that is a dangerous justification. None of us individually has a right to deprive another person of life, the right to life. I think collectively also morally we may find difficulty in justifying it, but the debate earlier on, confirmed that at least, for the time being, this country feels, it is necessary to retain that penalty.

I am submitting, Mr. Chairman, that, that penalty should be retained in very grave, extreme, in very extreme circumstances, and that is why we seek to describe the extreme circumstance as where life has been lost. Mr. Chairman, I beg to move.

THE CHAIRMAN: Now the proposition is that, article (2) be amended in terms of Motion but essentially, as I said earlier, to remove the reference to what here we say "except in very grave circumstances acceptable in a just and democratic society" replace it with the wording "except in respect of a criminal offence involving the loss of human life" otherwise the rest remains the same.

MR. KATUREEBE (Bunyaruguru county): Mr. Chairman, I rise to oppose the amendment. What the Movers are trying to do is to restrict the death sentence only in cases of murder but there are other

grave circumstances. In other words someone who attacks you in your house, armed with a gun or with a knife, shoots you, damages your spinal cord so that you become a permanent vegetable but does not cause you to die, that person may not be sentenced to death. I think that is not what is intended to be a cure. I believe, Sir, that we should be guided by even the findings of the Odoki Commission in discussing this question. I do not agree that the death sentence should be mandatory. I think it should be retained as we have voted to retain it but it should be extended to grave offences like aggravated robbery which means that there has been injury. We have already passed an Article where we are saying that if someone overthrows this Constitution, if somebody subverts a constitutional order and may lead to the death and destruction of life, that he is guilty of the offence of treason. Now by this amendment this fellow would not be able to face a death sentence. I am opposed to this, Mr. Chairman. I want us to look at the recommendations which form our working document of Justice Benjamin Odoki, who has considered these questions at great length and we go by that recommendation. In that I oppose the amendment.

MRS. JANAT MUKWAYA: Thank you very much, Mr. Chairman. I stand to oppose the Motion because it is restrictive. For our daughters, men have agitated about castration but I think young girls should also agitate for losing their virginity which is a pride for a woman. So, people who rape, people who defile, actually in this scourge of AIDS should suffer death. So for that reason, Mr. Chairman, for the pride of the woman, I move that you put the question.

THE CHAIRMAN: No, not yet. I will give the Floor to Hon. Malinga one of the movers to speak for the Motion.

MR. MALINGA (Usuk County): Thank you, Mr. Chairman. Mr. Chairman, we are signatories to the International Covenant on Civil and Political Rights which was adopted by the United Nations in 1966 and which entered into force on 23rd March, 1976 and in accordance with Part III, Article 6, sub-clause 2 of that covenant, we are enjoined that in countries which have not abolished death penalty where we have now placed Uganda, a sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of commission of the crime and not contrary to the provisions of the present covenant. So, really what we are seeking to

do really is to make this part of domestic law that the death sentence should only be preserved for the very serious offences. I would be willing to consider the views of other Delegates if they would I want to add or delete. We have proposed here that where loss of life is involved let there be a death sentence. We can go ahead and add such other things to cater for the legislation that Hon. Katureebe was saying that where an armed robbery has taken place we can say or where there has been use of fire arms or there have been use of - *(Interjection)* - yes, something like that.

Now, let me just react to what Hon. Mukwaya has just said about defilement and rape. It is a pity Hon. Karuhanga is not here but we spent about a year and a half recently looking into our criminal justice system. We have made our report which unfortunately is not published yet but at least the proceedings were public and in their submission to our Commission, some of the women groups had come face to face with the reality that since the passing of the making rape and defilement subject to death sentence, the Judiciary and the Police have sort of gone slow on processing the defilement and rape cases because of fear of imposing the death sentence. We have had cases, while we were sitting there was a girl in Soroti who committed suicide because her boy friend was taken to prison because allegedly her father had reported him as having defiled her. The girl said that she was a willing partner. First of all the age - *(Interruption)* -

THE CHAIRMAN: Hon. Malinga, there is information.

MR. BABU: Information. Mr. Chairman, I just want to inform the Hon. Member on the Floor and all the Members of this House through you that the reason why we put a death sentence was because of the protection of the family. And it came about because today there are men who are walking around and have got HIV and are suffering from AIDS. If a man who has got AIDS rapes your daughter, that daughter has been sentenced to death. Therefore, Mr. Chairman, when we are talking about raping and defilement and people are castigating the NRC, we had very good reasons why we passed the law at that time. In fact there was even a further proof, Mr. Chairman, that if a lady who is below the age of 18 gets pregnant and has been raped by a man who has got AIDS the chances invariably are she dies at birth. And these were the reasons why we put there the death penalty for defilement and rape. Thank you very much.

MR. MALINGA: Thank you very much. Let me conclude, Mr. Chairman. The problem is that the death sentence was made mandatory. This is where the whole problem is. The problem is making the death sentence mandatory. If that was the intention then the death sentence should have been discretionary and each case would have been looked into on its own merit. Mr. Chairman, so I strongly support this amendment. Thank you.

MRS. NTABGOBA (Women- Kisoro): Thank you, Mr. Chairman. I would like to oppose the Motion and the reasons are that most of these laws we are making are to help in crime prevention. Many people live amongst us but when they know we have got such and such laws they will fear to attempt any crime but if we remove them today they are going to go amok since they know no law will affect them.

On robbery with violence, treason and rape, the NRC included them in this category because most of them eventually end in death. An example of rape, last two weeks it happened in Mbarara when a girl was raped, a young girl and she was not treated, eventually she died. So, in that case what do you do? We are not looking at death which happens at once, we are looking at a crime which might lead to death. So, Mr. Chairman, for those reasons I oppose the Motion. Thank you

MR. KAVUMA (Kyadondo South): Thank you very much, Mr. Chairman. I oppose the Motion. Mr. Chairman, if we went to put in our Constitution a provision like the one the Motion seeks to import in we shall have betrayed our population. The population is saying and we were voting a few minutes ago, we were voting to express the desires of the population. They are saying all these serious offences, all these serious crimes must be punished by death. Now if we only restricted this only to murder, we are saying that okay, we know the cries of our people but we are now betraying them by narrowing, in other words we are giving with one hand and then taking away with the other hand. Mr. Chairman we were talking about things like treason

I think all our minds were that this offence, this kind of thing where our Constitution could be subverted must be met with no lesser punishment than death. Mr. Chairman, we also think about attempts. In law, when you are convicted of an attempt to commit an offence, the penalty for the offence which you attempted to commit would be applied to you be-

cause you had formed the intention and you had taken steps to prosecute that intention. Now, if we do not, if we say we will now restrict to cases where life has been lost, we are likely to get these people who commit attempts, who had all the intentions and took steps to prosecute their intentions, we shall be leaving them to go free, and I think this is not good for our society. I strongly oppose the Motion, Mr. Chairman, Sir.

MR. ATAMVAKU (Arua Municipality): Thank you, Mr. Chairman. Sir, I think this amendment is too inadequate. If you are going to restrict death sentence only to criminal offence involving the loss of human life, I think we are escaping other situations of criminal activities which are beyond the ordinary criminal offences.

I would like us to recall an example of Tanzania four years ago. What happened was that one Frenchman and one German picked a girl from a hotel, a mature girl I mean about the age of 18. They entertained her to alcoholic drinks. She was drunk and later on she was taken outside the hotel. At dawn she was awakened and forced to commit an unmentionable act with a dog. She was forced to commit an unmentionable act with a dog as the two white men took the photographs to send to Europe. Luckily they were arrested. Such a case could have been easily judged in Zanzibar, Sudan, Iran and elsewhere, in Tanganyika part of Tanzania, the two gentlemen refused to make statements. So, according to the Tanzanian law they were simply deported and this girl in other words was even made to pay for their taxes because the government issued air tickets out of Tanzanian public funds. So I would like the Hon. Members, Hon. Mulenga and Hon. Malinga to clarify for me that, that kind of offence is not involving loss of life but I think the lady had been reduced below human level, even below that of a bitch. So, while she did not die wouldn't we really impose death sentence? This makes me feel that this amendment is actually too inadequate. I think the proposers of this amendment are over confining themselves to the tradition we have inherited from the British. Perhaps we could even borrow a leaf from the Sharia Law so that the NRC would not face problems in prescribing law or legislating against defilement because I can understand a man of my age not knowing that a mature woman is a wife or not but I can not understand how a mature man should confuse a small girl of seven or four with a mature woman. So, Mr. Chairman, I submit that with the

background of accepting the Sharia Law I think this amendment is too inadequate. I submit, thank you and I oppose this Motion.

MR. ONEGI OBEL (Jonam county): Mr. Chairman, I have heard about the death penalty affecting rape that ends up with the transmission of the terrible disease, AIDS. I do not think, Mr. Chairman, that, that is enough. My submission is this that the transmission of AIDS through rape is not as bad as raping a four year old girl even if that two legged beast called man has no AIDS and I would think I would have no any other sentence for him because that little girl if it is not dead, it would just should die through the pain of the act and so that man to be left alone as a reminder - mind you, he would go to jail and come out, most likely the neighbour to this baby - who will be reminded that, that is the man who raped you when you were four years old regardless of what time or how old this girl is. I think for a crime of that nature, Mr. Chairman, this fellow should be removed from society. Thank you. And so I oppose the amendment.

THE CHAIRMAN: Hon. Delegates we have a time problem. I think let us vote on this one. The question is very clear, to replace a statement that talks of 'grave circumstances acceptable in a democratic society with, 'except in respect of a criminal offence involving the loss of life'. Now, I want to put the question.

(Question put negatived)

THE CHAIRMAN: Now we have the final amendment for the day. I think we should finish Article 52. We have the last amendment - *(Interruption)*

MR. OMARA ATUBO (Otuke County): Mr. Chairman, I have got an Amendment without notice - *(Interruption)* - yes, Mr. Chairman, I beg to move that you allow me an amendment without notice -

THE CHAIRMAN: Amending, which Article?

MR. OMARA ATUBO: Article 52 (1) which we have just - *(Interruption)*

THE CHAIRMAN: We have finished with it article 52(1): I think it will come at reconsideration stage because article 52(1) was debated at great length after an amendment and we agreed to the amendment.

MR. OMARA ATUBO: I think it is article 52(2), sorry

THE CHAIRMAN: This is the one we have just pronounced ourselves on.

MR. OMARA ATUBO: To insert (3).

THE CHAIRMAN: I Think let us hear the Hon. Members whose amendments have been circulated and then we see how we proceed otherwise. Hon. Malinga please.

MR. MALINGA (Usuk county): Thank you, Mr. Chairman. Mr. Chairman, I beg to move that we insert clause (3) to Article 52 to provide that, "Provided that nothing in this article shall be evoked to delay or to prevent the abolition of capital punishment" I beg to move.

THE CHAIRMAN: Is that seconded? Okay go ahead and speak to the Motion.

MR. MALINGA: Mr. Chairman and Hon. Delegates, once again we are a party to the International Covenant on Civil and Political Rights as I earlier stated which in Part III, Article 6, Clause 6 provides as follows: "Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any state party to the present covenant" So, Mr. Chairman, all that I am seeking to do by this amendment is to incorporate this into our law. What I am saying, is that the fact that we have preserved the death penalty should not prevent a review in the future of the necessity to keep the death sentence. That is all. *(Interruption)* Well, whoever feels interested in abolishing it should be able to present to Parliament a case for the abolition of the death sentence.

MR. AMANYA MUSHEGA (Igara East): Thank you very much, Mr. Chairman. I stand, to oppose the amendment because it is repeating what we had already done but besides, in Chapter 19, Article 289 (1) (a) and (b) it provides for the amendment of this Constitution. So, when the mood of the day for this particular section which is Chapter Five, it provides that at the second and the third reading there should be two thirds of all Members of Parliament and it should also be approved by two-thirds of all the District Councils. This is already provided for and we should not prejudice the future. We pass a law and then the future will judge. If they want to abolish

capital punishment they will do it and we can continue giving nice statements in the international councils. But here we are representing the views of the people who sent us here and there is no delegate from the International Human rights Commission or a thing like that. Thank you, Sir

THE CHAIRMAN: Now, Hon. Members, we shall not vote on that as I had already moved to say we should vote. The question is that we include a provision on the lines proposed by Hon. Malinga. I put the question.

(Question put and negatived)

THE CHAIRMAN: Now, I put the question on Article 52 as amended. Now, the question is that Article 52 do stand part of the Draft Constitution.

(Question put and agreed to)

Hon. Delegates, with this adoption of Article 52 we come to the end of today's business. Thank you for perseverance so that we made some reasonable movement today. I would like to remind you that the Business Committee's recommendation and I hope they will have things in place so that from Monday it is possible to have UTV in here for some time generally to cover our proceedings. It seems that there is pressure that the people should know about how we are working. Before I close, let me give the Floor to the Deputy Chairman of the Legal and Drafting Committee.

MR. BEN WACHA: Mr. Chairman, we have gone a long way with the Motions that we worked on. It is possible that on Monday we must exhaust the list that is before you, Mr. Chairman. I am therefore asking people who have amendments or possible amendments from Article 54 to Article 59 to stay behind (*Interruption*) because if we do not, Sir, we might run out of amendments on Monday and we might have no work. This is a proposal, if it is acceptable to the House to stay behind for at least one hour, we work out these amendments so that we have some continuous work for Monday and Tuesday. Thank you.

THE CHAIRMAN: I am sure this announcement has been heard and the Members concerned will oblige accordingly. I now adjourn the Constituent Assembly to Monday, 5th September, 1994 at 8.30 a.m. We stand adjourned. Thank you.

(The Assembly rose and adjourned to Monday, the 5th of September at 8.30 p.m.)