



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

MONDAY, 5TH SEPTEMBER 1994

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 1896]

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Monday, 5th September, 1994.

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

NATIONAL ANTHEM

PRAYERS

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

THE CHAIRMAN: Hon. Delegates, we have no specific communication from the Chair, so we can proceed.

REPORT FROM THE LEGAL AND DRAFTING COMMITTEE

THE CHAIRMAN: I do not know whether there is a report from the Legal and the Drafting Committee. I do not think the committee met. Could we hear from the Chairman or the Deputy Chairman, please.

MR. WACHA: Thank you, Mr. Chairman. When we left here on Friday Members expressed the view that they had had a long day and it was not possible for them to meet for any reasonable business. So, they suggested that if possible they would meet today. Thank you.

CONSIDERATION STAGE OF THE DRAFT CONSTITUTION OF THE REPUBLIC OF UGANDA

THE CHAIRMAN: Hon. Delegates, on Friday we concluded our business having approved Articles 51 and 52. We have Article 53 which had received attention of the Legal and Drafting Committee and which we have ready for discussion. The position, though, is that the Deputy Chairman of the Legal and Drafting Committee did report, the Legal and Drafting Committee was not able to meet on Friday, seeing that we had completed our business on that day at around 7.30. So, what we have with us now is only Article 53, and I propose to proceed as follows: That we attend to Article 53, -the Amendments proposed on Article 53, we dispose of Article 53 and then we allow time, this afternoon, for the Legal and Drafting Committee to meet together with the proposers of Amendments to handle articles 54 to 59 so that we resume tomorrow with a report from the Legal and Drafting Committee to expedite our work. This is how I propose to proceed for today. Unless I see any

contrary views, I take it that Members are happy with this proposition.

Now, Hon. Delegates, if you turn to page 4 of the proposed amending sheets, you will find a number of proposed Amendments at numeral 11, 12, 13, 14, 15 and 16, and therefore, we will start with a proposed Amendment to Clause 1, of Article 53. The proposal before me indicates that Hon. Omara Atubo, Dick Odur and Hon. Kirenga are sponsoring an Amendment to Clause 1 of Article 53. I assume that the person whose name appears first is the leader of the consortium, and therefore, I give the Floor to Hon. Omara Atubo to introduce the Amendment. But before Hon. Omara Atubo takes the Floor, I notice the hand of the Deputy Chairman of Legal and Drafting Committee.

MR. WACHA: Thank you, Mr. Chairman. Before the proposed Amendment of Hon. Omara Atubo, there was a suggestion from Hon. Gaston Maliro about Article 53(1). If he could be given an opportunity to express himself.

MR. MALIRO (Mwenge County North): Thank you, Mr. Chairman. I had proposed an Amendment of Article 53(1) but unfortunately, I was not around on Tuesday to present it, but when I contacted the Deputy Chairman he accepted to include it. Mr. Chairman, when I looked at article 53 (1), I found that it is left open for the Legislature to stipulate conditions under which personal liberty can be limited or interfered with. Mr. Chairman, I found that to me, it may be a danger, and I beg to move that conditions under which personal liberty can be interfered with or limited should be specified, and I would like that a list be made to follow immediately after the words "*authorised by law*".

Mr. Chairman, I was looking at the Constitution of 1962 and that one of 1967 and I found that these lists were given and there are very good conditions which I think could be adopted, not necessarily all, and for that matter, since the list is very long, it was my wish that the Legal and the Drafting Committee looks at these lists and picks out the conditions under which personal liberty can be limited so that we can discuss them later. I thank you, Mr. Chairman.

DR. KAKUNGULU (Presidential Nominee): Thank you, Mr. Chairman. At the end, in Article 53(1), I realise that much as we would adopt that

very long list of the 1962 and 1967 Constitutions, there could be a short cut to this in that at the end of the words "authorised by" we could put the statement that "laws consistent with this Constitution" so that it reads that "No person shall be deprived of personal liberty except as may be authorised by laws consistent with this Constitution." I thank you, Mr. Chairman.

THE CHAIRMAN: Now, let us get the procedure correct. Hon. Maliro moved an Amendment, but I was not sure that it was seconded or were you seeking clarification on a number of issues before you move it formally?

MR. MALIRO: Mr. Chairman, Dr. Kakungulu's proposal does not answer my question, because what I want is that that list be specified so anything beyond that should be illegal. Now, when we put that, we are still giving room for the people to make these conditions, and these conditions can be varied by the government of the time.

THE CHAIRMAN: Have you written out that list?

MR. MALIRO: It is very long, Mr. Chairman.

THE CHAIRMAN: Well, I mean, it has to be - the rules say the Chair can allow Motions to be moved without notice, but even then they must be put in writing by the mover.

MR. MALIRO: Yes, Mr. Chairman, I have put it in writing, alright, but I say that the Legal and the Drafting Committee could sit down and then we put then in order, other than bringing down a list and we start discussing it before amplifying it.

THE CHAIRMAN: But that creates problems for our work, it means we have to adjourn. You see, you are amending Clause 1 of Article 53, and if we now skip Clause 1 and go on to the others, we may create problems with the way the sequence of things run in that particular article.

MR. RINGWEGI (Padyere County): Thank you, Mr. Chairman. Mr. Chairman, I thought you had just asked on a point of procedure whether the Motion had been seconded, and I think that nobody has seconded that Motion so far.

THE CHAIRMAN: You see my difficulty was that he had not framed it and the text is not with me

so that even the question of seconding it, even if it was overcome, I want to know what we are debating.

MM. RINGWEGI: Yes, Mr. Chairman, and I wanted to offer some assistance that Hon. Dr. Kakungulu had also suggested - I mean, proposed a Motion that the Article be varied so that instead of listing we have it reading "A person shall be deprived of personal liberty except as may be authorised by laws not inconsistent with this Constitution". I thought that would have given us a headway if Hon. Dr. Kakungulu decided to move that proposed Amendment.

THE CHAIRMAN: But Hon. Maliro is not happy with that. The only thing is that if you look at our rules, again to remind ourselves, rule 48(11), "The Amendment which in the opinion of the Chairman departs furthest from the text under discussion shall be debated and disposed of first". According to what we have here, the proposed Amendment by Hon. Omara Atubo and the other two Members is to delete the entire Clause 1 and substitute it with another, which, in my view departs furthest than the attempt to amend it or categorise the circumstances under which article (1) remains as it is and then proceed. So, actually we should start with the case of Hon. Omara Atubo and see how we go. If it is carried, then it negates all these other Amendments.

MR. WACHA: I have discussed with Hon. Omara Atubo and his views seem to have been misinterpreted. According to him, he wants his Amendments to be a follow-up to Clause 1. In other words, we insert Clause 2 and 3 after clause 1 and that still leaves us with the issue of Hon. Maliro.

MR. CHAIRMAN: Is that correct Hon. Omara Atubo?

MR. OMARA ATUBO: Yes, Mr. Chairman, it is correct. I think it was a typing error and I intended to leave 52(1) as it is and insert the new clauses soon after 53(1). Mr. Chairman, thank you.

MR. KISAMBA MUGERWA (Bamunanika County): Thank you, Mr. Chairman. Though Hon. Maliro has not moved his Motion formally, we have had opportunity to discuss this Article in different fora. It was suggested that the list as he has really put it is long and is bound to change from time to time. If you make it constitutional, it will be very difficult to subject it to changes as circumstances may change. I do not know whether we can appeal to him to

succumb so that we have the other Amendment discussed, because what he is suggesting will make the Constitution very cumbersome. It is so long and that is why it is left for Parliament where it can easily be amended just according to situations.

MR. MULENGA (Democratic Party): Thank you, Mr. Chairman. It seems to me that if this is the only Amendment to Clause (1) of Article 53. Mr. Chairman, you could take the request made by Hon. Maliro that it be referred to the Legal and Drafting Committee for refining. Since there is already indication that the Committee will be meeting this afternoon, it may be possible for them to refine it and report back. He has expressed difficulty that the conditions are so long and he thinks that a legal touch would help. I think it is not the first time that a clause is differed to be done later. Perhaps, Mr. Chairman, it could be useful to give the permission or to decide to defer it until the Legal Committee has looked at it with him and see whether it can be made concise in the manner that he has proposed.

THE CHAIRMAN: Thank you. Let me hear from the Chairman of the Legal and Drafting Committee on that proposition.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. It seems to me that there are two principles and one must be decided first. The Amendment proposed by Hon. Dr. Kakungulu seems to me that it deals with one principle that we do not have to enumerate the conditions and which liberty may be deprived, and it seem to have had support. So, before we can submit the Amendment to the Drafting and Legal Committee, we should resolve between the two, which one we want to adopt. Is it the shorter version of Hon. Dr. Kakungulu or do we want actually to enumerate the conditions under which anyone may be deprived liberty? So, before we can resolve between the two, I do not think we can proceed any further, Mr. Chairman. I thank you.

MR. BAGENA (Bufumbira County, East): Thank you, Mr. Chairman. I think this question of a list of rights is quite in order, but because we want to make our document not so bulky, I would really want to support Hon. Kakungulu's proposition and then find out the possibility of adding a schedule separate from the wording of the main body of the Constitution. Thank you, Mr. Chairman.

MR. KAGGWA (Kawempe Division South): Thank you, Mr. Chairman. I think that there is already an enumeration in the Constitution, and what I would, therefore, want to go along with is the proposal made by the delegate from Mwenge North and also at the same time, I would want, in that breath, to ask that Hon. Omara Atubo's proposal be considered by the Legal and Drafting Committee along side the proposal of the delegate from Mwenge North and we come out with one consolidated list which is acceptable to this House.

MR. OMARA ATUBO: Mr. Chairman, Hon. Kakungulu's Amendment that the law should not be inconsistent with this Constitution, is not necessary because if you look at what we have already passed in Chapter one, it says that all laws made in this country should not be inconsistent with this Constitution. So, it is superfluous and unnecessary, and all that we have to consider is whether we should go along with the proposal of Hon. Maliro. Thank you, Mr. Chairman.

MR. SENDAULA (Bukoto South): Mr. Chairman, my view over this point, if we can be permitted to move, is that if we are going to list whatever is covered here - I have got a copy of the 1962 Constitution - under the same Personal Liberty, which is under Article 19, Chapter 3. The list is extremely long and when you go into the 1967 Constitution, that is Chapter 10, again the list is pretty long, and there are possibilities that from time to time, this list can change. I think we should leave the liberty to Parliament at the material time, to state whatever personal liberties that have to be protected. This is my view.

MR. MALINGA (Usuk County): Thank you, Mr. Chairman. What Hon. Maliro proposes to move, Mr. Chairman and Hon. delegates, is to include what was contained in Article 19(1) of the 1962 Constitution which also appears as Article 10(1) of the 1967 Constitution. It may be helpful if we were to address ourselves to the specific issues which are raised in that thing. That Article provides that: "*No person shall be deprived of his personal liberty, save as may be authorised by law in any of the following cases:*

(a) *in execution of the sentence or order of court, whether established for Uganda or some other country in respect of a criminal offence of which he has been convicted;*

(b) *in execution of the order of a court punishing*

him for contempt of a court inferior to it.
(c) in execution of the order of a court made to secure the fulfillment of any obligation imposed on him by law

(d) for the purpose of bringing him before a court in execution of the order of a court... It lists instances where a person's liberty may be taken away from him. So, really this is all that this proposed Amendment is, and the Member is seeking to refer this to the technical and legal committee who will then report back to us. If we just agreed to it in principle, we would be able to move forward. Thank you, Mr. Chairman.

MR. BAGEYA (Kigulu North): Thank you, Mr. Chairman. Looking at what document we want to produce, we would like to produce a very short document but quite precise. I would like to go along with Dr. Kakungulu's amendment, because we cannot elaborate whatever we want to put in the Constitution, then I think we shall be doing the job of Parliament. Let us leave room for Parliament to operate, because these laws are not static, they will have to change at one stage or another. I, therefore, would like to support, very strongly that we go along with Dr. Kakungulu's Amendment.

MR. OKENY TIBERIO (Chua County): Mr. Chairman, I would go in very much for support of the previous mover, that this list be examined by the Legal Drafting Committee. Because we are making here a Constitution and in our Constitution we should be very precise of the liberty of the people. It has been the subject of concern in this country that the liberty of the people has been very much interfered with. So, we cannot now put our responsibility to the then coming Parliament to work it out for us. I think we have got to list it, if in 1962 they took the pain of listing it and even despite that it had been intervened, why should we now throw it all out together? I do not think it will be wise enough for this Assembly to throw this out. We should list them, it is much better to be lengthy in our Constitution and clear than to be short and vague, and subject to interpretation by any government that may be. So, I would very much support that the list should be examined by the Drafting Committee, and probably advise accordingly, and then we shall see. But I insist that the list should be inclusive. Thank you, Mr. Chairman.

MR. KARUHANGA (Nyabushozi): Thank you, Mr. Chairman. I think the Amendment by Hon.

Gaston is really misreading the subject, and I think the work he wants to give to the Legal Committee is a very complicated job. If he gives a list of laws, does it mean that those laws will never be amended by Parliament accordingly as they wish from time to time, does it mean that you are going to be stuck to the existing laws as they are, without any future Amendments, or that if you want to amend those laws then it will be a constitutional assembly which will be convened to amend those laws? I think what he actually wants is that certain laws which are relevant to this are known. But if you could read Hon. Kakungulu's Amendment, all his fears are well taken care of there. Because Hon. Kakungulu's Amendment is saying please no person shall be deprived of personal liberty except as may be authorised by laws consistent with this Constitution. This is the way to write a Constitution. Supposing, for example, the list that he gives us now there is something that he has missed, what then happens? Then you will have tied the hands of Article 53(1). So, I would appeal to him to accept Hon. Kakungulu's Amendment and then we proceed.

THE CHAIRMAN: Let us hear from the Deputy Chairman of the Legal and Drafting Committee.

MR. WACHA: Mr. Chairman, to me the basic principle behind this Article is the personal liberty, the inviolability of the personal liberty of the individual. I feel that for the personal liberty of the individual to be seen to be protected at all times, the state, the courts, the enforcement officers should know under what circumstances those liberties can be infringed. That is why I feel, Sir, that the provision as it appears in Article 10 of 1967 Constitution, is perhaps, the best so far! It does not, and I must emphasise this, that provision does not indicate the laws which should be utilised. They only indicate the circumstances under which the liberty of the individual can be infringed, and those circumstances do not change! That is all, Sir.

THE CHAIRMAN: I will have a few more contributors and then we move. Let us hear from Hon. Kawooya.

MRS. KAWOoya (Women Delegate - Masaka): Thank you, Mr. Chairman. Mr. Chairman, I wish to add my voice to those of the Members who would buy the idea of going with the Amendment as raised by Hon. Kakungulu. The Amendment raised by Hon. Gaston which is giving a very long list, to me

I really feel that the words "personal liberty" consists of rights, rights guaranteed by law which ensures the citizens first that they are protected. So, by the time that we are suggesting to have that list and they are referring to the Legal and Technical Committee, it would be that we are taking over, maybe, we are giving the work which would have been looked at by the Parliament and defining it further. Whereas these laws are protected against infringement by any persons or secondly by the state or government to interfere with the rights of the persons or the individuals. I still think that the words "personal liberty" covers what Gaston is trying to say or what some Members are trying to say that we should clearly define it, and I would suggest that Members accept and we go with the Amendment raised by Hon. Kakungulu. I thank you.

MR. OWINY-DOLLO (Agago County): Thank you, Mr. Chairman. Mr. Chairman, of the two positions on the Floor, one seeking to enumerate the various circumstances under which the law may allow encroachment on personal liberty, and then one seeking, as proposed by Hon. Kakungulu, to leave it to Parliament, Mr. Chairman, I thought the House would be interested to look at this Article 53 with the two proposed Amendments alongside Articles 51(2) which we have already passed and maybe, instead of leaving it to Parliament, this House makes reference to whatever encroachment of liberty is being proposed in accordance with the provisions of Article 51 clause 2, so that - actually, it is provided for in this Constitution, it is not even left to Parliament - so that liberty is only encroached upon in pursuance of Article 51 clause 2.

MRS. MWESIGYE (Women Delegate - Kabale): Thank you, Mr. Chairman. Mr. Chairman, personal liberty and circumstances are not static, they are dynamic, and obviously personal liberty changes within the changing circumstances. Consequently, if we set down a list, in my opinion, that will be very, very restrictive. Article 51(1) is very broad, it is explicit and it is understandable. Therefore, we can either debate that article, pass it or reject it, or the Member who wants to enumerate a list of liberties and circumstances should proceed now and he enumerates them, we debate his Motion and dispose of it. We either approve what he puts down or not so that we can move. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. delegates, I think we have heard views on various positions relating to

these two. We come back to one position. Let us refer to the Legal and drafting Committee and they will come back to us. The proposals by Hon. Maliro and also the proposal by Hon. Kakungulu can be looked at by the Legal and Drafting Committee in light of the comments made on the Floor and then they come back to us and we proceed. Is that okay? Fine.

MR. OMARA ATUBO (Otuke County): Mr. Chairman, I ask for your indulgence. Soon after your Communication from the Chair and the report from the Legal and Drafting Committee, I raised my hand to seek a guidance because last week, we did ask the Legal and Drafting Committee to come out with an idea on Chapter 3, some of us have Amendments which we wanted to move from Chapter 3 to this fundamental human right and some of them even have been passed. They were supposed to be included in Article 50 and others are in 51 but I do not know whether we are going to go back after receiving this report. This report is supposed to have come last week and we are moving ahead, yet we have Amendments which we would like to move from Chapter 3 to Chapter 5, and I do recall that some Amendments of Hon. Ruzindana were accepted from Chapter 3 to the Constitution in Chapter 1. So, rather than do double work when the report from the Legal and Drafting Committee is submitted and we might have to go back even to Article 50, may I be guided by the Chair what we are going to do in this circumstance?

MR. CHAIRMAN: Yes, I did receive a very brief statement from the Legal and Drafting Committee to the effect that given the amount of work we have imposed on them from time to time and other constraints, the analysis of Chapter 3 was not ready and they needed another one week and a half, I think, if I may be correct. Maybe, I could hear from either the Chairman or Deputy Chairman of the committee, please.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. The Chairman's impression of what has happened is correct in the sense that we have had no opportunity to consider how we deal with chapter 3, nevertheless, we ask the Technical Committee to advise us how we could proceed with that Chapter and their work is very well tendered, and we are hoping that within a short time, we shall come up with recommendations. Nevertheless, Mr. Chairman, that does not stop any distinguished delegate from making a proposal where he thinks that some of the clauses in Chapter 3 could be transferred

somewhere else. We would rather that he waited until we report on the whole Chapter, but that does not bar him, if he feels very strongly that a certain proposal would strengthen what we are presently considering. We would be very happy to consider such a proposal in light of our consideration of their Amendments. So, I do not think that Members should feel strained from making proposals which affect the contents of Chapter 3. I thank you Sir.

MR. OMARA ATUBO: Mr. Chairman, in the absence of the substantive Chairman, when that apparently was not adopted in the Legal and Drafting committee when we met, therefore, if you look at Article 12 in Chapter 3 which deals with protection and promotion of fundamental rights and freedoms, I with others had been very keen to move Clause (1) of Article 12 to be the opening clause in Article 50, in that it would very clearly state that fundamental rights and freedoms of individual and groups are inherent. But we are prevailed upon to leave the whole clause and wait for the report. So, the substantive Chairman, definitely does not seem to have been abreast with these proposals.

THE CHAIRMAN: But can today's Chair know one thing, is this holding you up on 53?

MR. OMARA ATUBO: No, it was a guidance. So, subject to their report, they wanted the House to be aware that there are so many of these ideas which are in Chapter 3 under protection and promotion of fundamental rights and even protection of women, culture of constitutionalism which are also very relevant to Chapter 5 and most delegates had withheld their proposals, because we were waiting for the report of the Legal and Drafting Committee. So, a person like me has already been overtaken by this proposal in the sense given in clause (1) of article 12 where the opening paragraph in fundamental human rights should really state that fundamental rights and freedoms of the individuals and groups are inherent, that has been missed.

THE CHAIRMAN: But I think we did give the Legal and Drafting Committee mandate to look at Chapter 3 while we reserved our own position on the basis of the report that they are going to give. Should that report impact, even on those sections we have settled or think we have settled, I do not think it is wrong for us to revisit them, after all, the document is still before us.

MR. OMARA ATUBO: I accept that, thank you.

THE CHAIRMAN: If we take it that way, then you can proceed with 53.

MR. OMARA ATUBO: Mr. Chairman, let me now proceed. Mr. Chairman, I intend to move an Amendment as I do now, that immediately after clause (1) of Article 53, the following new clauses be inserted, namely that: "*No person shall be arrested, restricted or detained except by a person authorised by law*". Mr. Chairman, the two proposals in (1) and (2) are so inter-related, I do not know whether procedurally it will be right to argue for both, but when it comes to voting we vote separately.

THE CHAIRMAN: Sorry, I did not get you there, you are saying we discuss one -

MR. OMARA ATUBO: The two proposals on arrest by a person authorised by law and detention in a place authorised by law are so inter-related, that I would have wished to argue for both, but when it comes to voting, we may vote individually to save time.

THE CHAIRMAN: Now, you are proposing to insert a new clause (2)?

MR. OMARA ATUBO: Well, clause (2) and clause (3).

THE CHAIRMAN: And then what is now clause (2) would become what?

MR. OMARA ATUBO: Clause (2) becomes - if we approve both Amendments, the present clause (2) becomes clause (4), because there are two amendments I am proposing.

THE CHAIRMAN: Let us get that clear, you are proposing that -

MR. OMARA ATUBO: That "*No person shall be arrested, restricted or detained except by a person authorized by law*", and two, that "*a person arrested, restricted or detained shall be kept in a place authorised by law*". So, those are two separate Amendments.

THE CHAIRMAN: They are not related in terms of wording.

MR. OMARA ATUBO: Well, let me argue them independently.

THE CHAIRMAN: So, let us take the one which, if carried, becomes clause (2), we dispose of that and then we go to the next.

MR. OMARA ATUBO: Thank you, Mr. Chairman. Mr. Chairman, Members will definitely see that in clause (1), the law is providing for circumstances under which personal liberty may be infringed upon legally and in clause (2), the law moves ahead to say a person who is arrested, restricted or detained shall be informed immediately in a language that he understands. Mr. Chairman, it is my considered view that when you are depriving a person of his personal liberty, and before you arrest him or restrict him or detain him, there is something that should be done which should follow logically from the infringement of his personal liberty, and that there is a person who is infringing that personal liberty and to me, it is important that a person who infringes on a personal liberty should only be a person authorised by law.

Mr. Chairman, we in this House are aware of our history in this respect: how various organs of government, how various individuals pretending to promote the law, and how under various circumstances individuals have been arrested, restricted or detained by a person who should not in the normal circumstances be exercising that power *-(Interruption)*.

THE CHAIRMAN: By the way, we have not recorded your seconder, I am sorry on that - we have not recorded your seconder.

MR. OMARA ATUBO: Well, I have got, Dick Odur and Kirenga.

THE CHAIRMAN: I thought they were sponsors, okay, it is now seconded by Prof. Nabudere and Hon. Wasswa Lule.

MR. OMARA ATUBO: So, Mr. Chairman, it is important that in the Constitution, we do not leave this lacuna which may allow future governments which necessarily do not respect human lives to infringe on personal liberty. We know that under normal circumstances and that in the existing law, it is normally the Police who have wide powers under the law to arrest. But we also know that certain individuals, normally intelligence organisations and people em-

ployed in some organs of government, have gone to the extent of arresting, restricting and detaining persons, which should not otherwise be the case. So, I think that it is very important that if we are to protect personal liberty in this country, a person should only infringe on a personal liberty of a person when he is authorised by law, and the law will be made by Parliament. Like now, one of the laws we have made in Parliament is to authorise the Police to arrest people, restrict them, detain them and that one is specifically provided for. So, I believe that, Mr. Chairman, in the promotion and protection of fundamental human rights and freedoms, it is important that this Amendment of a person authorised by law be passed by this House. I thank you, Mr. Chairman.

CAPT. BABU: *(Point of Clarification)*: Mr. Chairman, I agree entirely on this Motion, but I would like a clarification. When you have a situation like we have had in this country in areas where there is insurgency, or you have a situation where there is war, what law will the government use to stop the death of citizens, to protect the citizens from people whose motives would be to kill people in that area, what will happen? This is not the first time we have had this in other places where persecution has been earned. I do not and I do not agree that it should be abused, I want to make this point clear, but I would like a clarification from my Friend.

THE CHAIRMAN: Okay, you have made your point. Someone else wanted a clarification, Hon. Katureebe

MR. KATUREEBE: *(Point of Clarification)*. Thank you, Mr. Chairman. I am seeking clarification from the Mover on this question of a person authorised by law. We know that under the criminal procedure court, any person may make an arrest if he sees somebody about to commit a crime. Is this amendment intended to deprive private citizens of their powers to arrest? What happens in our areas where the Police is too far away, what would happen? Could he please clarify this for me?

COL. P. KUTESA: *(Point of Clarification)*: Thank you, Mr. Chairman. I wanted clarification from the Mover. Although I support him on some of the aspects, but I am asking, is a prisoner of war covered in this? If someone is captured during war, how is he handled by this amendment he is moving? Thank you Sir

PROF. KANYEIHAMBA (*Point of Clarification*): Thank you, Mr. Chairman. I would like to seek clarification here because if we - if the Mover has accepted the contents of clause (1) which says that nobody may be deprived of liberty except as may be authorised by law -

THE CHAIRMAN: No, he has not, because that one has been referred to your committee.

PROF. KANYEIHAMBA: Oh, I see. Nevertheless, Sir, I wanted to see how his amendment - how does it relate to the whole question of criminal procedure and laws that relate to war situations and so forth? Because, in all these cases, Sir, private citizens are entitled to make arrests and indeed in many cases, they are obliged. Does he not see that his Amendment would, therefore, restrict this issue of the private citizen to make arrests, and therefore, make it impossible for the administration of justice in this country? I wanted to know whether he can assure us on that one. Having said so, I hope that I will have an opportunity to put in a substantive contribution opposing this Amendment. Thank you, Sir.

DR. MUSANA: (*Point of clarification*): Thank you, Mr. Chairman. I want to seek clarification from the proposer of the Amendment on the grounds that like in areas like the place I represent, some armed robbers may come and after shooting for a long time, they run short of arms and so they become harmless, would the villagers leave them to walk away, because they are not authorised by law, until the Police comes, maybe two days later when they have gone? Thank you very much, Mr. Chairman.

MAJ. TUMUKUNDE (*Point of Clarification*): Mr. Chairman, thank you. I want us to imagine a situation where, let us say, a prominent political person from Gulu decides to hold a meeting with Lakwena or with Kony, and during the meeting, the Army gets information - because I seem to get the motivation of this very Amendment - and when information is got, there is reasonable ground to move and try to arrest this meeting, this meeting is got in progress and the people are found in the act, there in session meeting, what does the Army do now, do they bring the Police in Lira or Gulu or do you move? I wanted a clarification from the Mover of the Amendment that is all, Mr. Chairman.

LT. COL. SSERWANGA LWANGA (*Point of clarification*): Thank you, Mr. Chairman. I am seeking clarification from Hon. Omara Atubo how he is going to handle the rapists: when a mother finds a beast penetrating her child, and she raises an alarm for the villagers to come and assist, are the villagers going to leave this beast because they are not authorised by law, when the Police is very far away? I am seeking a clarification from Hon. Omara Atubo.

MR. MUSUMBA: (*Point of clarification*): Thank you very much, Mr. Chairman. Mr. Chairman, there is something I do not seem to understand because all the clarification we have had seem to suggest that all other persons except the Police are not to be authorised to arrest under the proposed Amendment of Omara Atubo. But when I read it, I do not get that impression, I get the impression that all he is trying to do is to ensure that whoever may, be it a private citizen, be it who else, whoever should arrest anybody should be authorised by law. I am finding a problem in finding harm in this particular provision because all we need to do is to define who else besides the Police should arrest, and in today's laws we have ample leverage.

MR. OWOR (Asua County): Mr. Chairman, I would like to follow up the reasoning of Hon. Musumba. Mr. Chairman, this is a constitutional provision that eventually becomes the text that could also authorise Parliament to make various laws, and in these laws, they can, in various situations, identify who is authorised to arrest who and like at the present moment, there are laws that authorise any person to arrest a thief for example, and or to effect arrest of somebody who is caught committing an offence and not necessarily being a police officer. All that this is trying to protect is that no person will allocate himself the duty of arresting at will and we have had situations where members of the military personnel have personal arresting powers to the extent that they have personal prisoners whom they can put wherever they want and the government knows nothing about it. The legal State organ knows nothing about it and yet these people are arrested simply because the man who arrested him is a military officer or a police officer. And I think this is a provision that will guard against that. It does not mean that this is the only provision that will exist. But Parliament can make laws under this provision. Thank you Mr. Chairman.

MR. ATAMVAKU ZUBAIRI: Thank you Mr. Chairman. I am of the feeling we are escaping from a very real situation.

MR. WADADA NABUDERE: Point of order. I raise a point of order Mr. Chairman. I thought that Members had raised issues for clarification by the person who raised the motion. I think we should listen to him clarify because it appears now opinions are being expressed before the debate has started.

THE CHAIRMAN: Some of the questions were being answered along the way actually. And I was narrowing them down so that when I give him the Floor, he does not have to go too far. In fact after Hon. Zubairi, Hon. Mulenga then we go to the Mover.

MR. ATAMVAKU: Thank you Mr. Chairman. I am saying that we seem to be escaping from a very real situation. I know there could be exceptions. For instance, one Hon. Member has made an allusion that constitutes any such situation which I think the law eventually takes care of. But in a document like this, that is the constitution, we are really trying to specify a general principle and also state the conditions which are much more prevalent than these exceptions which are being sought as clarifications. Therefore, this motion of amendment should be supported for it is quite clear that a private citizen or somebody in a government position may fall out of favour with either a section of a government or the whole government as such. Now circumstances arise where individuals in a government or the government as such decides that this person should no longer be a free citizen even if the grounds are not valid. Now in such a condition, a security man, say a soldier, will start to apprehend this person or group of persons and dump them maybe in a military barracks or dump them into prison. Now here the provision is setting that persons must be authorised, and therefore, in specific conditions which conditions shall be specified by law. Therefore, those clarifications which are being sought, I think they will be taken care of in specific legislation. Mr. Chairman, I am therefore of the view that if we do not accept this amendment, we are going to leave the room wide open for the security personnel to violate the personal liberties of citizens as it has always happened. I do not think that we should close our eyes on what has happened just because in a given position, we are at an advantage not at a disadvantage. We should look at the future. Mr. Chairman, therefore, I support that amendment. Thank you.

MR. MULENGA: Thank you Mr. Chairman. Mr. Chairman, I am rather surprised by this trend of seeking of clarification when the matter is obvious. It was started by Hon. Katureebe who said - and I think I can paraphrase his query as follows that the law of criminal procedure permits citizens to arrest. What will happen if this amendment is passed? Mr. Chairman, the amendment seeks to say that only persons authorised, be they either in the rural areas or in towns, have that power to arrest - legal power. So, when Hon. Members talk as if this amendment is seeking to deprive citizens from arresting, I think that is a misunderstanding. The law authorizes citizens to arrest in circumstances that have been described by way of example like Hon. Serwanga Lwanga. If someone is caught in the act of raping a young girl or a big one, everyone is authorised to arrest - is authorised by law to arrest. Now, I am hearing people Mr. Chairman, asking from left, right and centre, then why the amendment, why the amendment! It has been explained. The point is that we have had experience where people have used official positions to arrest in circumstances other than authorised by law - (*Interruptions*) - Mr. Chairman, may I get protection?

THE CHAIRMAN: Order! I think also, do not allow yourself to be heckled if you can continue with your line of argument.

MR. MULENGA: Much obliged Mr. Chairman. Mr. Chairman, I was going to say that there are circumstances under which every citizen is authorised to arrest, that is when the culprit is caught in the act or about to do the crime. The situation that is envisaged by this amendment, I think, is where some organs like the intelligence - we have had in the past intelligence organisations which would go and conceive a case or be fed on some false allegation and go and effect arrest of persons on trumped up charges. Now there is a difference between arresting a culprit in the course of committing a crime, there is a difference from where someone in the lawful execution of his duties in his office or at home is arrested by some intelligence or security officer on information given that has not been investigated. I think what is intended by this is to say, only in circumstances where a person is authorised to arrest and that could be a civilian, a police, an army officer who has heard Lakwena meeting with some politician and so forth. So Mr. Chairman, I think this amendment is being misunderstood.

THE CHAIRMAN: Okay, let us hear from the mover because there were a number of points which were raised for clarification. If he thinks that this matter has been fully clarified, then we can proceed to discuss a bit more and then make a decision.

MR. OMARA ATUBO: I thank Hon. Mulenga for taking off some of the clarifications I would have wished to say and therefore to save time of the House. I will not really repeat that. What is known in law is that individuals of this country have power to arrest and as Hon. Batt Katureebe has said, it is clearly stated in the various laws. The criminal procedure code is very clear on this matter in the cause of arrest. And therefore, this amendment does not seek to remove any power of the citizens of this country, whether he is a chief, whether he is an individual person anywhere in this country. If a person is committing an offence, the man has the power, but we are looking at the situation which has been abused in the past and I think Mr. Mulenga has very clearly elaborated on this.

Mr. Chairman, we have talked of the normal and abnormal situation and the abnormal situation the delegates have brought up is a situation of war, a situation of insurgency. Mr. Chairman in a situation of insurgency, in a situation of war, first of war, we have got the Insurgency Act which was passed in Parliament and Hon. Babu was there and some of the NRC Members are there. It clearly states a situation which prevails under that insurgency Law. The arrests, the trials - the trials are not even by ordinary courts because under the insurgency situation, it is by a magistrate and some army officers and some civilians constituting more or less duly.

So the situation under this insurgency and under the war is taken, even under the state of emergency which we are going to pass. It is very clear here. Apart from that, an ordinary soldier, an ordinary person, a soldier is also - apart from being a soldier, he is also an ordinary person. So he can arrest in the course of his duty. But Mr. Chairman, for the information of this House, the Police Bill which we passed and - I do not know whether the President has signed it so that it becomes a Police Statute, but let us call it still a Police Bill, which we passed about two or three weeks ago clearly states in section 24 for example that *"a police officer may, without a court order and without a warrant, arrest a person if he has reasonable cause to suspect that a person has committed or he is about to commit an offence."* So

you see the power of arrest even to a police officer is not that automatic. He can arrest without a court order or without a warrant only if it is an arrestable offence and an arrestable offence is defined in the Police Bill here to mean an offence which, on conviction, may be punished by a term of imprisonment of one year or more or a fine of not less than shs. 100,000/- or both. So in certain circumstances, even a policeman may have to go to court and ask for a court order or for a warrant. So we are protecting people. We are saying that if you are to arrest, first you have to arrest according to law but more so, a person who is authorized by law. So we are really protecting and we are trying to enrich this power of arrest but also to restrict it so that no person in future - and we know how, especially intelligence organisations and certain organs of the State have in the past interfered with personal liberty, kept you in Naguru, kept you in State Research and so forth. So we are not derogating anything which is already under the law. We are only making it very specific, very explicit and very clear.

If a person finds a child being raped, that is a very clear case or an arrestable offence. It is a clear case of a felony, a chief does not have to wait, the local people do not have to wait. They can just straight away arrest him, but we are trying to avoid an abnormal situation which the State can abuse Mr. Chairman. I hope I have been very clear. Thank you.

MR. WASSWA LULE: Thank you very much Mr. Chairman. I think the motion is quite clear in that it does not go against the grain of article 53 clause (1). All it does is, it puts the onus on Parliament to legislate for circumstances during which citizens, the police and military may arrest and it runs away from possible anarchy whereby people will simply arrest under any circumstances as they may see fit. I will give an example. On 19th of July, one of my campaign managers was arrested in a property wrangle that had been adjudicated in his favour and taken to old Kampala Police Station. The following day, on the 20th of July, his son, who I believe is upstairs, who is also one of my campaigners was arrested by a man in military uniform, a Lieutenant whom I know, who claimed to have connection with the office of Inspector General of Government - and I told the Inspector General on that date - and he too was taken to old Kampala police station in connection with the property wrangle. Now he could have been taken to Makindye. Detention in a designated place of confinement. The first step towards disap-

pearance as a form of governance is being able to detain people under any circumstances anywhere the people may see fit.

THE CHAIRMAN: Hon. Lule, we have two amendments here. There is one relating to who may arrest. You are now moving and anticipating debate on proposal two where an arrested person may be kept. So, I think let us confine ourselves to who may arrest.

MR. WASSWA LULE: Okay, I will bring the other examples later.

THE CHAIRMAN: Yes, that one should come when we come to the other one.

MR. WASSWA LULE: So, I will conclude by saying that it does not detract from the draft as it is but it simply puts the onus on Parliament to make sure that we put strict conditions under which people may arrest. Thank you very much Mr. Chairman.

DR. KABERUKA: Thank you Mr. Chairman. Mine is a small one. I want to be clarified whether being arrested is not part of taking one's personal liberty because if it is, then this amendment is redundant.

MR. SAMKUTEESA: Thank you Mr. Chairman. I share the fears being expressed by the Hon. mover of this motion, not the fear but the reality that State agencies, State functionaries have arrogated to themselves the right of arrest and have abused the liberty of our people over a period of time. But having said that Mr. Chairman, it seems to me that the Hon. Mover's motion is really incomplete. Hon. Mulongo's argument, notwithstanding, because whatever law exists today and whatever law is enacted after we have promulgated this constitution, if it is inconsistent with the provisions of this Constitution, that law is null and void. And I think this is the major point that was being brought up by those who were talking about or who were seeking clarification. The moment you say that no person shall arrest a person unless he is authorised by law and you do not exclude the rights of citizens to arrest or except the rights of citizens to arrest or war situations, then this motion could tie the hands of future legislators. Or else, you must now catalogue a list of those who are going to be authorised by law to arrest. Short of that, I think the problem we are having is not that anybody is against the abuse of liberty of a person. I feel very

strongly that the liberty of our citizens, if we are talking about democracy, if we are going to talk about genuine development, their liberty must be protected. The problem I find with this provision is that it is not fully drafted to except the rights that we have talked about. If the criminal procedure code today provides that a citizen can arrest and you provide here that no person can arrest unless he is authorised by law, you are saying that the criminal procedure will be maintained unless you are saying it must be maintained. So, I would say, in this provision if this Hon. Mover could re-word it to say that except for the right of citizens' arrest and the right of arrest in situations of war by other agencies. What he is trying to prescribe in my opinion, is anybody masquerading as a UPC youth-winger or DP youth-winger with a gun or a NASA agent or ISO agent going to villages and harassing people and arresting them without lawful cause. If that is the intention, I am sure he will receive the support of this House. But then we must exclude the other rights. We must not stop the other rights of the citizen or the situations of emergency. I would therefore suggest, Mr. Chairman, that if Hon. Omara Atubo would again liaise with the Legal and Drafting Committee and put in this Motion with the necessary exceptions. I see no problem. I think nobody wants to authorise arbitrary arrest by unauthorised agencies. I thank you Mr. Chairman.

PROF. WADADA NABUDERE: Thank you Mr. Chairman. I support the motion on the ground that this will strengthen the right of innocent people who have been arrested, particularly the relatives who would have the right to clause (7) of the same article where the rights to Habeas Corpus is provided for by specifying that a person who arrests should be authorised by law and that the place to which that person is taken should be authorised by law. It makes it easier for a citizen or a relative of an illegally arrested citizen to know the place where he can deliver the writ of habeas corpus for the production of that person. So it enhances not only the freedom of the person arrested but also of the relatives who may be aggrieved by such arrest.

I would like to comment on the point made by Hon. Kutesa. Really it is not necessary to exclude the right of ordinary citizens in cases of insurgency because it is really covered by the amendment itself because the amendment says, no one shall arrest unless he is authorised by law. That covers the ordinary citizen because that person is authorised by law and can

arrest. So it goes against only those who act in circumstances where clearly he or she is not authorised by law to arrest.

THE CHAIRMAN: Hon. Kuteesa, you are not supposed to conduct a seminar across the benches.

MRS. FAITH MWONDHA: Thank you very much Mr. Chairman. Mr. Chairman I am a little bit worried because we appear to be taking this exercise as merely an academic exercise. I think when we are trying to move this amendment or enact the Constitution, really, we should look at what the problem is. I do not think that in Uganda, the problem has been that there has been no provision of arresting or a person arresting without an order or lawful order. I do not think that that has been the problem. The problem has been indisciplined leaders who have taken over government by force of arms and when they take over government by force of arms, they first abrogate the Constitution and when they abrogate the Constitution, the rights of the citizens are jeopardized. For instance, my father was arrested at the air-strip in Kololo when he had come for the celebrations of - is it UNLF or something - in Obote II. He was arrested by just mere boys. Was it because there was no law which forbids somebody from arresting someone without a lawful order? Of course the law has been there and as it has been correctly put by Hon. Mulenga, that actually the people in certain circumstances have a right to arrest. The right has been there. So I do not think that putting it in the constitution will do anything because if it is in the Criminal Procedure Act and still people have been hiding it in contempt, these indisciplined leaders, intolerant leaders, I think the problem is more than that. The problem is not the law. So we should be serious and not take these things purely for academic purposes. Thank you very much. - Mr. Chairman, excuse me, there was one other thing I forgot to say, if the law is there of authorising persons in certain circumstances to arrest, then why the amendment if the law is there? Then it means the amendment is actually redundant. So it is time wasting. Thank you.

PROF. KABWEGYERE: Thank you Mr. Chairman. I would like to strongly underline the points made by the last speaker because having a clause in the constitution cannot stop people abusing the law and we should separate the abuse of the law and the existence of the law. The law has existed, only that the law has not been obeyed and in those cases where

the law has not been obeyed or followed, the only problem has been that nobody could take the culprits to court because there was no respect of the law even respect of the courts. So, to me, when you look at our draft constitution, if article 51 is in place and if the right politics, right leadership is in place, you do not have to state it in the manner that you state here because the fundamental rights are supposed to be observed by those in charge of the State. Now, if as already pointed out, there is already a provision, there is an existing law and that law is supposed to be consistent with this constitution, there is absolutely no need to have to state it in the constitution and that calls for the elaborations that have been made. Then you would have to detail who is covered and who is not. In which case, really you are usurping the role of Parliament where the right laws are supposed to be made to interpret and implement the constitution. I thank you Sir.

MR. LIIGA: Thank you Mr. Chairman. Mr. Chairman, we have already said that all power belongs to the people in the first instance. Now, how are we going to allow the people to exercise that power if we cannot remove from them the power to effect certain arrests? I have had a bit of experience when I was in Mbarara when our friends from NASA simply grabbed a citizen from my court and dumped him in the cells in the barracks. I tried very hard to complain and eventually the man was put to the police. Of course even the people who were concerned took the matter seriously. The point I am trying to make is this that the proposed amendment will simply make matters worse by getting the people, we the citizens, to fear to make arrests simply because the law does not say that every citizen shall or may effect an arrest. I would rather say that we emphasize the point that once a citizen has been arrested, he should, as of right, be taken to a place that is gazetted for keeping an arrested person as it is going to come out under number two. I feel that the first clause here is redundant in the present circumstances, whether politically or otherwise although I have the fear as expressed by Hon. Kuteesa, that some political - shall we call them misguided political functionaries - may try to squeeze and actually harass the people for their ulterior motives. As far as I am concerned, I think clause (1) should be thrown out and we emphasize clause (2) when it comes to discussion. Thank you Mr. Chairman.

MR. DICK NYAI: Thank you Mr. Chairman. I find, Mr. Chairman, that we are arguing round in

circles. I think we should first address ourselves to the intent of the constitution. We are mindful of what has gone in the past. We are now trying to put down structures which will enable future Parliaments to implement correct policies. I think in supporting this amendment, I am seeing it providing for Parliament to then make the enabling laws. I do not believe that it is the nature of constitutions to start defining the exceptions. The definition of the exceptions will come in the subsidiary legislation from Parliament. I do not think we should turn ourselves into a Parliament. We are a Constituent Assembly and our business is to lay down the broad principles of good governance which includes providing for the elimination of unnecessary rascals from our resting citizens. I think this is a very good amendment and I would like to prevail on my Colleagues that we support it immensely. Thank you Mr. Chairman.

MR. ODUR: Thank you very much Mr. Chairman. I co-sponsored this amendment for a number of reasons which have already been mentioned. But I would like just to emphasize one thing that we are making a constitution for a better Uganda and taking into consideration the past mistakes if I may call them so. It is just right that we should make some corrections now and this is what we have attempted to do in providing for the new clauses in article 53.

Many of us will remember that a number of persons are always arrested and thrown into police cells and the arrest officers are nowhere to be seen and nobody has got any power to look for them. Now this kind of behaviour does not augur well for an orderly society and I think what we have suggested here would go a long way in addressing these problems. In fact, the concern is to protect and safeguard personal liberty. It is not to limit the activities of any lawful authority, it is merely to safeguard and protect the personal liberties of individual Ugandans. Mr. Chairman, if we were to list rights in order of merit, personal liberty would rank next to life which is the mother of all human rights as we know it on earth here. This being the case, personal liberty should not be abused. In fact it is abused most directly to a lot of human sufferings. As we have known, people are staying in prisons without knowing what they have been arrested for. All these spring from unlawful activity which, if we adopt clause (2) now as suggested in our amendment, will go a long way in curbing those abuses. Mr. Chairman, I beg to move. Thank you

PROF. SENTEZA KAJUBI: Mr. Chairman, I beg to support this amendment because of the experience which we had in the past, people being arrested and carried in boots of cars and so on. But having listened to the arguments, it seems to me that everybody is authorised to arrest but in certain circumstances. I think the emphasis should be on certain circumstances and I will therefore, like to propose a small amendment in this proposal and that is, "*no person shall be arrested, restricted or detained except by a person and in circumstances authorised by law.*" So the phrase "*in circumstances*" I think, is the most important one having agreed that the ordinary citizens, a soldier, a policeman is authorised to arrest but not in all the circumstances. I am wondering whether it might improve the amendment if "*circumstances*" were included in the clause.

THE CHAIRMAN: Is that seconded? - So it is just contribution.

MR. BABU: Thank you very much Mr. Chairman. First and foremost, on the onset Mr. Chairman, I would like to say I do not support abuse of any liberties of any person. However, we have to be very careful that we do not make clauses and laws on a spur of moment and because of sentiments. I do agree entirely Mr. Chairman, looking at the history of this country, that right from 1964 onwards, the liberties of the people of this country have been abused and I looked at a simple graph, looking at them increasing between 1971 and 1979 when there was total chaos in this country and the liberties were totally abused. In 1979 to 1985, this also continued at a certain level. I am examining from 1986 up to now looking at the beginning when it was rather high and the reduction up to this level. I do see that today, a court can demand that prisoners are brought for trial and they are produced by the government and the reduction is there.

My argument here Mr. Chairman, is in principle I do not think by putting this clause in the constitution will change the abuse. I think the abuse will be brought about by having good leadership in this country. I think the problem is, there are a lot of people here who think that we must put clauses in the constitution because of the spur of the moment. I do not agree. I would like to say that on the leadership and a good democratic society in this country, if it is brought and a good legislature which will then make laws which will protect the liberty of those people

that is going to be important - the fundamentals, it is not going to be what you put in this constitution because somebody a few minutes ago was kind enough to tell us it can be suspended and somebody can still go back to the bush. I think the important thing is to set the foundation of a democratic society.

Now, I am a little bit worried, Mr. Chairman that every time somebody has a sentiment, we must include it in the constitution. I think we should here get involved in knowing exactly what is going to happen when the constitution is done. (*Interruptions*). Mr. Chairman, the other day I was here saying that there is this euphoria of making amendments into a constitution. It is good and it is a good exercise but apart from being academic, I want us to remember that the constitution is going to be the basic law of this nation and the legislature that we are going to debate on, in the future is going to take the other laws that are going to help us in restraining a lot of things that are going to happen in this country. If you are going to make this constitution the Statutes or the Acts, then Parliament will not have any work.

I would like therefore, to agree with somebody who has said that Parliament must be given the power enabling it to make new laws and then somebody behind who is Hon. Wasswa Lule is saying what has Parliament been doing? Parliament created this House and Hon. Wasswa Lule is here.

THE CHAIRMAN: No, we do not allow a dialogue between you and Hon. Wasswa. I think you should address (*Interruption*)

MR. BABU: Mr. Chairman, the CA has an onus and that onus is to make sure we create a foundation and we create a House of Parliament in the future that will be strong enough to change with times but if we make the laws now and there are changes, then the Parliament's hands will be tied. They will require an amendment of the constitution to be able to do their work. I would like, therefore, to propose Mr. Chairman, that this time in this constitution, I would like us also to begin to have interpretation because the Constitutional Commission has not got a representative here who tells us why they decided to put in these clauses. What invariably is happening is that people are just amending these clauses and nobody is telling us why these clauses are in here. I was going to move later on Mr. Chairman, that probably the technical committee should include somebody who had been on the Constitutional Commission so that they can

tell us and answer some of these questions. Thank you very much Mr. Chairman.

MR. ONGARIA: Thank you very much Mr. chairman. First of all, I would like to oppose very strongly Hon. Babu's presentation of saying that we are making laws at the spur of the moment or even that we are making laws on sentimental considerations. Mr. Chairman, we are talking about an issue which has been with us for very many years where the laws have been abused and we are talking about the leaders who are bad leaders not good leaders. Tomorrow, we may have a bad leader, what will happen? We shall continue suffering. So it is important at this moment when we have an opportunity to make sure that the law is put there to protect the liberties of the people. That is why I am strongly supporting this point. If we cannot resolve it here, let the technical committee handle it so that a provision is made in the constitution whereby bad leaders are not going to abuse the liberties of the people of this country. Mr. Chairman, thank you very much.

MRS JANAT MUKWAYA: Thank you Mr. Chairman. I need clarification from the mover. Unless I get that clarification, I see the amendment as redundant. Is this amendment intended to be an enabling clause to future Parliament because without it other laws have been made? I have heard people talking about security agencies but these form part of this constitution which we are going to debate and I thought that when we come to that chapter, we shall give them what we think they should be doing. So, I really see no point of raising this amendment here unless the mover assures me that it will not make the prevailing laws null and void if we put it here. That is what I wanted.

MR. MIYINGO KEZIMBIRA: Thank you very much Mr. Chairman. Mr. Chairman, when I learnt that all citizens of this country are authorised by law to arrest then Mr. Chairman, I really do not see why again we are going to curtail the citizens themselves to arrest by putting in this provision. The qualification to arrest at a particular point may be varied depending on who you are going to arrest. An ordinary citizen may be able to arrest somebody who has ran out of arms like Dr. Musana said but then somebody who is more sophisticated than this may be arrested by another citizen who may belong to a security agent. I think now, what we have got to do is to try and curtail the abuse and that should be done by Parliament. Again I would also like, maybe later

on, to appeal to all Members and the House as a whole that we should preferably emphasize more the work of the councils - I do not know which councils eventually we shall have, whether they will still be the resistance councils or not. Because it is now common practice in our constituencies that one cannot be arrested unless the RCs are aware of what is taking place. Most of the people who are arrested from our villages, the RCs will be aware and will know why such and such a person is being taken. So if we could further on strengthen whatever councils you want to put in place - I do not know whether they will be resistance councils or local councils or whatever it will be, I think we shall really reduce the abuse of people arresting innocent citizens of this country because the RCs or whatever council will be everywhere in the country and they will ensure that law and liberty of the people are guarded against. Thank you very much, Mr. Chairman.

DR. RUHAKANA RUGUNDA: Thank you very much Mr. Chairman. Mr. Chairman Sir, all of us here cherish personal liberty and we should try and entrench it as much as possible. I agree with the sentiments made that the problem in Uganda has not been so much of the law as it has been bad politics and bad leaders. Mr. Chairman, I agree with the sentiments raised by Hon. Omara Atubo but I must say that those views do not substantially add anything better to the existing clause. In fact when you look at the proposed amendment, it weakens the original clause because the amendment is talking of restricting a person, detaining a person or arresting a person. These are merely different forms of personal liberty. Whereas the original clause is saying that no person shall be deprived of personal liberty, whatever form of deprivation. So in fact the amendment narrows the original provision, it narrows the original clause. If we therefore adopt Hon. Omara Atubo's amendment, we will be weakening the original clause as drafted by the Odoki commission and will therefore not be entrenching personal liberty in as much as we should entrench it. I therefore oppose the amendment, not the substance of it but because it narrows, it weakens the personal liberty as entrenched in article 53 clause (1). So Mr. Chairman, I propose that we reject the Amendment, retain the original clause and then make progress. I thank you.

MR. WANENDEYA: Thank you very much Mr. Chairman. Mr. Chairman, I am very cognate of the fact that laws are there and provisions of the consti-

tution in connection with what Omara Atubo is trying to do. But I am wondering Mr. Chairman whether or not he could just be erasing three words by having - in I think the second line, by a person and we put there as a way of just simplifying the whole matter, just after the first word in the second line "by a person", we just substitute it with just one word "as" Mr. Chairman, in addition, I want Hon. Omara Atubo to clarify whether we can include the word "intimidation" so that no person shall be intimidated, arrested, restricted or detained at will as a way of bringing all these together. Mr. Chairman, the clarification I want is this that people have been detained quite often at will and intimidated and they go into exile whereas there is nothing but these are security organs. So I want my Brother Omara Atubo to clarify whether he would accept those amendments from which I can go ahead Mr. Chairman to make formal amendment to his amendment. I thank you Mr. Chairman.

THE CHAIRMAN: Well, even if he accepted, if there was no secondment, it could be difficult. I think the Hon. Omara Atubo seems to have an idea in view of the comments made.

MR. OMARA ATUBO: Mr. Chairman, just on clarification in order for Members to look at this thing more objectively and broadly, one, in 53 (1), we are talking about deprivation of personal liberty. This is a statement, a declaration that no person shall be deprived of personal liberty. Now what I was amending or introducing as a new clause is, who is this person who can deprive you of your personal liberty? So Hon. Rugunda's basis of argument should take this into consideration. Last time when we were discussing the issue of women, we were talking about equal protection of the law and we actually found that equal protection of the law does not mean equality before the law. So what I am putting here is that the law may say you are not going to be deprived of your personal liberty but I am saying, who is this person then who is going to deprive you of your personal liberty? The second point Mr. Chairman is that Hon. Delegates have concentrated on arrest, we have concentrated on arrest but I want you to look broadly at the amendment. We are talking about arrest, restriction and detention. And this is what even the substantive clause is talking about: a person who is arrested, restricted or detained. So, while we are debating this thing, please, let us not look at the narrow aspect of just arrest, we are talking about a person arrested, a

person restricted, a person detained and these are legal terminologies and a person who is doing that must be authorised by law not by his own whims. Thank you Mr. Chairman.

THE CHAIRMAN: Now Hon. Delegates, we have had a very broad survey of this. We have now heard from the mover, I know it is not fair on people like Moses Ali given his bit of experience but I think we have had a broad survey. Okay, let us put it this way, we have had the pros and cons in relation to this amendment, we have had a very broad survey. It is a very popular subject but if we go on, we shall be prejudicing other provisions which are coming and you know we intended also to move on to other work this afternoon. I will hear from three people as follows: Hon. Kanyeihamba, Hon. George Masika and Hon. Moses Ali and then we wind up.

PROF. KANYEIHAMBA: Thank you Mr. Chairman. It is with regret that I must oppose this amendment. I think in my opinion, the amendment is misplaced. You see Sir, in this clause, we are talking about general powers of arrest and general powers of depriving liberty and we know Sir, that the bulk of these powers are exercised in accordance with the law under the Penal Code and the Criminal Procedure and indeed as everyone has emphasized, by the arrests done by private individuals. It is very, very important Sir, that we do not confuse the ordinary citizen in his vital role or her vital role in administering justice. And my fear is that if we place this amendment here, it is going to put fear into the ordinary people who administer or participate in the administration of justice.

Secondly, Mr. Chairman, as everyone has pointed out including the mover of this motion, the people who abuse this particular power are people who are involved in things like insurgency, people who are involved in the security of the State, people who are not normally involved in the ordinary administration of justice and therefore, the reason I am saying that it is misplaced is that why do we not confine this kind of definition to those securities and organs of government which are likely to abuse the powers rather than make a general provision at this juncture?

Thirdly, Mr. Chairman, the abuse of power is done by politicians and bad leaders. Whether you put this provision here or not, I can guarantee that abuse will be there, it cannot remove them. Therefore, we should be aiming at making provisions for dealing

with those people who abuse the right and the liberty of the citizens. We should strengthen those provisions in the Draft Constitution which give penalties or restrict or politically punish those that abuse power rather than give a bad signal to the whole population that you have no power to arrest anyone in the administration of justice unless you are authorised by law.

I am amazed by some learned Friends who have already made contributions. Let me say that these provisions in the draft constitution were very carefully thought about by the Odoki Commission who included experts. They were not simply derived from their head but Uganda is a signatory to the Universal Declaration Of Human Rights where The Bill of Rights is enshrined. We are a signatory to the Organization of African Unity Charter on human and people's rights where all these words have been very carefully defined, I do not think we can add anything by subtracting and here I agree definitely with Hon. Ruhakana Rugunda that in fact, if we were to pass this amendment, it would dilute what we already have, particularly in the administration of justice. I would like to assure those who are concerned about the abuse of liberty that the present wording in this particular section is adequate enough to protect our liberties and we should look at those provisions which tend to penalize those that may abuse the power or exceed the law as it is written down. So, Mr. Chairman, I believe that this amendment is misplaced and I would like to oppose it. I thank you Sir.

MR. GEORGE MASIKA: Thank you Mr. Chairman. I support the amendment and add this, the fear which Members entertain of the past regimes and the present regime - because as I said, there are people being arrested in Mbale for no apparent reason - is that some people give themselves the power of arrest and dumping the persons arrested in lawful detention places. So, while I agree that every ordinary citizen should have the power of arrest, I feel that before the person is restricted or detained in a police station, the police officer or whoever is in charge should be satisfied that in the first place, there is ground for his arrest. So, I would persuade the mover to add the word "and" to read as follows: "No person shall be arrested and restricted or detained except by a person authorised by law." Now that would mean, whereas an ordinary citizen can arrest and take a person to a place of detention, that person will not be detained unless the officer there is satisfied that there is ground

for doing so and this will therefore mean only persons who are authorised to arrest, restrict and detain can do the arrest in those three stages. But any other person may arrest and he will not authorise the restriction or detention unless the person restricting or detaining is satisfied so to do.

If the mover of the motion can agree to insert "and" it will achieve, I think the purpose which many of us are afraid of. I do not know Mr. Chairman, whether there is any other way in which a person's liberty can be deprived without being arrested, restricted or detained so that in my view, this amendment can go a long way in satisfying what we fear about, the usual rampant arrests without authority and restriction, without any ground whatsoever. So, I should support the Motion and ask the Mover to accept the addition which would limit the powers of ordinary persons just arresting as they want. I so ask Mr. Chairman.

MR. MOSES ALI (East Moyo): I said what I am going to say has not been said here so far and it is true because since we started in this House, the word "untouchable" has not been mentioned. In our society, by virtue of some of our peoples offices of excessive powers that they found themselves in, they become untouchable even beyond those who put them in power, they cannot touch them and therefore the law cannot affect them and these are the people now we should actually aim at. If they are not touchable now, they should be touchable in future when the situation that makes him untouchable does not exist any more. So, we should put a law in place that should this Government come to an end, definitely the untouchable now we hear of, will not continue with this situation and that law is there. So, we should be able to call these people who abuse power, detaining people, arrest people, put them under the tree or in the hole or in an unauthorised place - because at that time he is not untouchable, that law will hibernate so long as he is still powerful or untouchable and these people have been in any Government, Mr. Chairman, in any Government, including this one. Now you cannot touch them, but we should put a quiet law here, like we have put - (*Laughter*) - like, Mr. Chairman, we have protected our Constitution, that you overthrow this Constitution and then live beyond the Government that you used to overthrow the Government, so that we shall revive it and put you under the law.

So, for those who are abusing personal liberty, I think I would consult with the lawyers, that we should come with a Clause that would hibernate here

and against people who abuse, they can arrest. Now, what can you do? Anything! Whatever law we make here, you can not stop people from breaking it, you have no power and these laws we make here or the laws that are already there, are made to protect the society, but some members of the society have got to break them every day and every night. So, we cannot stop them. Therefore, these amendments, I would say really, will not, even if we passed them, it will not have any meaning if it is not respected like any other law, but if we bring in the intention of that Amendment - bring in a law that must aim at the untouchable, then we shall get them.

Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Members, I think with that, we should now pronounce ourselves on this. We have had a very extensive debate, not everybody can contribute to each and every proposed Amendment. The method we used is the one we are going to use unless the Chair determines that other methods be used. So, now, I put the question. Now, the question is in relation to a Motion moved by Hon. Omara Atubo in terms that "no person shall be arrested, restricted or detained, except by a person authorised by law". This would introduce another provision, separate from the rest under 53 (1), it would be 53 Clause (2). So I put the question.

(*Question put and negatived*).

THE CHAIRMAN: Hon. Omara Atubo, you have another Amendment.

MR. OMARA ATUBO (Otuke County): Mr. Chairman, I seek to introduce the second Amendment which actually was emerging from the Amendment which has not been quite successful - I said quite successful. Mr. Chairman, the Amendment reads as follows: - (*Interruption*)

THE CHAIRMAN: But it can stand on its own. Can it not?

MR. OMARA ATUBO: It does, especially if 53 (1) - Clause 1 which has been sent for some surgery with the Legal and Drafting Committee in view of the Amendment of Hon. Maliro goes through, my Amendment would have been catered for. So, Mr. Chairman, the Amendment reads as follows: "A person arrested, restricted or detained shall be kept in a place authorised by law." Mr. Chairman, let me repeat that, because I got about three, four hand written notes from Colleagues that - (*interruption*)

THE CHAIRMAN: Hon. Members, those who are walking out, could you do so with courtesy and decorum rather than conducting seminars?

MR. OMARA ATUBO: - that I was seeking to - *(Interruption)*

THE CHAIRMAN: Hon. Babu, would you not interrupt our proceedings? Yes, hon. Omara Atubo.

MR. OMARA ATUBO: - that I was seeking to amend Clause 53 (1), that is not the case as the Chairman put it, it is completely a new amendment and we were leaving 53 (1). Some Members were under the impression that the way it is written here, that I was deleting 53 (1), that is not the case. I wanted just to amplify article 53 (1). So, Mr. Chairman, it is very simple, we intend that when you arrest a person, when you restrict, when you detain a person, it should be in a place authorised by law.

At the moment, the Prisons Act, the Police Act and so on, do that, but unfortunately, we have had abuses where people have been arrested, detained in wrong places, in their personal houses and so on. So, this really puts an umbrella Constitutional provision where in future you can declare, in a state of war, that Lubiri Barracks or Gulu barracks, you can detain if you want, you can detain a person in your house if by Statutory Instrument you declare it and so on, but all we want is that, a place where a person is restricted, detained, must be according to law. Otherwise, the issue of habeas corpus will be greatly abused. Mr. Chairman, with those few remarks, I call upon Members to support the amendment. Thank you.

THE CHAIRMAN: And I take it that it is seconded? That Amendment - and you have spoken to the Motion any way Member for Padyere.

MR. RINGWEGI SAM (Padyere County): Thank you, Mr. Chairman, Sam Ringwegi, Padyere County. Mr. Chairman, in fact, the time your eye caught me with Hon. Omara Atubo, I was trying to persuade him to withdraw his first Amendment and to stick to this particular one which I thought was very pertinent. Mr. Chairman, I find the Motion moved to amend - to insert this provision, an appropriate Motion. Hon. Omara Atubo has already explained why this particular Clause is necessary in a constitutional provision. Our experiences have been that, people, even in authority, people who are authorised by law to make arrests, have even gone

further than that. In arresting, they do not take you to a legal place of confinement. People have been detained in car boots, people have been detained in garages, people have been detained underground and I think these are beyond human dignity. So, it is important that we make a constitutional provision which can at least guide the people in authority that even if somebody is suspected to have committed a crime, or caught committing a crime, his human dignity should not be derogated, he should be detained in a place whereby, he can also be given the right to explain under what circumstances those offenses have been committed. If a man is detained for instance in a toilet, there are chances that that person can easily contract some diseases and even die, but yet our law is also saying that, this person must not be treated as an offender before the Courts of Law so pronounce that he is an offender. So, we should think seriously about the venue for which legal detention or confinements should be so that the principle of personal liberty cannot be derogated and abused. I therefore, would like to support the Motion and I implore all Hon. Delegates to look at it very seriously and support it. Thank you, Mr. Chairman.

MR. GEORGE ZZIWA (Kawempe Division North): Thank you very much, Mr. Chairman. I am George Zziwa from North Kawempe. I whole heartedly support this Motion, Mr. Chairman and in fact, it is a consolation to Hon. Omara Atubo, it precisely gives a partial answer to his lost Motion and it does so as follows. It is only in an authorised place of detention where law will apply and in any other law, Mr. Chairman, whatever law we put in the Constitution or whatever law is passed by Parliament will not apply and for that reason, I feel that the Amendment has come at the right place and in the right time. In fact, I wanted to criticise an Amendment moved earlier on by Hon. George Masika whereby he said - *(Interruption)*

THE CHAIRMAN: But that matter has been discharged so you cannot go back to it really.

MR. GEORGE ZZIWA: Mr. Chairman, I just wanted to bring out a point to emphasise that it is only the authorized place where things can work. The assumption was that, when somebody is taken to the Police Station or wherever he might have been taken, then, that is when the law would apply but we have in our history at the back of our minds numerous places: places where people have been taken and these unauthorised places have resulted into death.

Even those places which had been established unlawfully by government - we know of the Nakasero place where people were being battered to death and it is only when a place is authorised that a person can safely be kept and taken and for that reason, Mr. Chairman, I support strongly the Motion moved by Hon. Atubo and it is a consolation to him. Thank you.

MR. KAYONDE ISRAEL (Gomba County): Israel Kayonde, Gomba County. Mr. Chairman, I support this Amendment very strongly. As somebody who has been trapped here in Uganda for a long time, under these terrible regimes, we have experienced horrendous things in Uganda. Mr. Chairman, most Members will remember the notorious places like Argentina, which was a private resident in Mbuya; people will remember the notorious Nile Mansions, the torturing Chambers in Nile Mansions, next to the Vice President's Suite and these things were happening. So, Mr. Chairman, I think if we put these provisions in the law, much as it may not deter those leaders to commit these crimes, and I think we should also strongly buy Moses All's submission, but actually, there must be a provision that we can resort to some of these constitutional provisions when somebody has lost that untouchable power. Mr. Chairman, somebody will rise and say, what happens when there is a state of emergency or war? It is also important that even if there is insurgency, and you have apprehended someone, he should be taken to the authorised places or the gazetted areas where the law allows to confine someone. But I want to submit here, Mr. Chairman, that prisons now - Uganda Prisons I think are not also offering the atmosphere for human dignity. These prisons, the way they were constructed, they were supposed to handle certain people, but now, I think they are as worse as some of these places where the private individual keeps pigs. So, I strongly support and I think this is a very important provision to be in our Constitution. Thank you, Mr. Chairman.

MR. BASALIZA HENRY (Fort Portal Municipality): Thank you, Mr. Chairman. I would like to support this Motion, if only the Mover could clarify to me the following issues:

- (i) Now, suppose these places for confinement - these places authorised by law are full up, where would these people be put?
- (ii) Supposing they are too far way, where will these people be detained or arrested?
- (iii) This is connected with terrible criminals, we

have read the history of the world and even here, that whatever criminals, once they are put in authorised places by law, then people can break in and have them released and I understand that there is a law in place that once a person is arrested, then he is supposed to be detained in a place authorised by law. Those are three points on which I would like to be clarified. Thank you, Mr. Chairman.

MR. BASOGA NSADHU:(Busiki County): Thank you very much, Mr. Chairman. I had almost given up. I was seeking a clarification. Of course I support this Amendment because I have been locked in boots and a few other funny, funny toilets.

THE CHAIRMAN: Is that the only reason?

MR. BASOGA NSADHU: But I would like the Hon. Mover of the Motion to clarify to me, whether we do not really have a law already in place which establishes areas of confinement and whether it has not been indiscipline of other security agents or other persons to lock up Ugandans into car boots, etcetera? I wanted to be sure in my mind that we are not duplicating laws or whether this will give it additional strength because it is in the Constitution. Thank you very much.

MR. KAVUMA STEVEN (Kyadondo South): I thank you very much Mr. Chairman. I am an ardent supporter of protection of human rights and the liberty of the individual, but Mr. Chairman, I am getting worried. We may be thinking about situations we have experienced in the past and try to cause a cure for them in a document called a Constitution. There are other laws which take care of situations we are talking about, where even if you are arrested by a Military Personnel, if you are a civilian, you are supposed to be handed over to the Police and the police know where to detain you properly, they know the authorised places of detention. So, Mr. Chairman, I think we should really stick to the principles, if a situation is covered by our laws, what we need is to improve on our institutions and the operators. That will be the cure, but not to try and write everything in what we call the Constitution of Uganda. We have, in the past, been arguing that we need a document that is of a manageable size, but if the trends we are taking now, it appears we are going - if we are going to accept things because of sentiments or because of trying to compensate where one has lost one Motion, we are likely to go into that trap that is repetitive and unnecessarily verbose. I thank you, Sir

MR. OGWEL LOOTE SAMMY (Moroto Municipality): Mr. Chairman, I would like just to inform the current speaker who has just finished that there are many occasions in this country, people have always nobody, if the Military personnel have arrested people or security or NASA, they have always handed them to the Police, they are always taken to the Quarter Guard, tortured, and this is the experience in many places. So, there is no guarantee and there is according to the experience of many Ugandans, these people have always been put in the Quarter Guard, in their houses, in the garages, in the car boots, without being taken to the proper places.

MRS. RHODA KALEMA (Kiboga County, East): Thank you, Mr. Chairman. Mr. Chairman, I also want to - although I am in favour of trying to explain and make it clear that we make a firm Constitution, I feel that we should be careful, not to believe that we must tie up the Constitution by giving details. I support Hon. Steven Kavuma, the Hon. delegate who has just spoken a few minutes ago. Much as I would like to see that we protect the personal liberty of every body as much as possible. Mr. Chairman, if we were to base the Constitution on the experiences of the dictatorial regimes, we shall not move very much. I personally also, when I was arrested, I was taken to State Research for a whole 12 hours. I was taken to a Military Barracks for seven days and I was blindfolded and I was not - no one knew where I was, until I reached, luckily, to the Women Prison after seven days. Then I was in a proper place, authorised by law. Many people here have got similar experiences, but Mr. Chairman, if we were to try and restrict the bad leaders, we will not succeed. The bad leaders will still be there, it is up to us, it is up to the people of this country to see how they can fight the bad leaders not to continue with the practice of the past. So, I feel that it is not all that necessary to give all these details of the restriction because the law is there. We should not feel that because the law was violated, and constitution abrogated, then, we have to make this Constitution stronger by detailing all these different circumstances. The last Government before this one, had this law, had the Constitution in its hands, but it violated the laws of it, left and right. So, Mr. Chairman, I think we should move and I would like to beg that you put the question and we vote on it.

THE CHAIRMAN: Let us hear from Hon. Okalebo and then -

MR. OKALEBOHENSLEY (Bukedea County): Thank you, Mr. Chairman. Okalebo, Bukedea County, Kumi District. First of all, Mr. Chairman, we are here making a Constitution and our intention is to make a sober, acceptable, sustainable Constitution. We are not here deliberately wasting time. That is not true at all. Now, contributing on this Article here on the Proposed Amendment, it is better to include now than to omit and regret later. *(Applause)*

We are putting in provisions intended to protect society and they do no harm if they exist leave alone they being abused, that is a different matter. Here, the Amendment sought - really goes to say that when you detain a person, he should be detained in a known place, legally authorised for detention. We have known of instances where a person is arrested and he is just hidden away by those who arrest him or her. When you want to effect a law, by asking production of this man or this person by means of habeas corpus, you send it to a place where he is supposed to be and you will only get a reply that he is not there. Why hide this person, if it is not just to keep him away for the sake of keeping? People should be detained in the places where they can be visited by their relatives, by their families, by their lawyers, and by those who would like to know about them; even to know how their health is when they are in such places. So, this one actually clearly says, if you arrest a person and you want him detained, keep him in a place where he is accessible to those who need to see him. So, strongly, Mr. Chairman, I do support the Amendment.

MR. LUBEGA-WAGWA SWAYIBU (Butambala County): Thank you Mr. Chairman. I am Lubega Wagwa from Butambala county Mpigi district. I rise to support the Amendment proposed by Hon. Omara Atubo. In the past, Mr. Chairman, you could see people detained, the places were not known by their dependents and we could see the dependents moving up and down and just find out that somebody is kept in the boot of a car and at times those people were killed or died in the boots. So, now, when we are making this Constitution, we must be very clear that the places where those people are detained are clearly gazetted so that the people do not take long - I mean, moving up and down looking for the places where their relatives or their husbands or wives are detained. So, I strongly support this Amendment and I would like to appeal to the Members of this House to support this amendment, it is for the good of the people. Experience has shown that

people were being kept in places which are so dirty that you cannot even expect a sound, sensible Government putting people in those places. So, I support this Amendment, Mr. Chairman.

MRS. LAGADA AMONGI: (Women Delegate - APAC): Thank you Mr. Chairman, Lagada Beatrice, Apac. Mr. Chairman, I would like to support the Amendment by Hon. Omara Atubo. Mr. Chairman, many Hon. Delegates have given examples of the past where Ugandans were arrested and were kept in places which they should not have been kept in. This not only causes suffering to the person who is supposed to have committed crime who has been arrested, but it causes a lot of suffering to the relatives and the friends of that person who is arrested when they do not where their person, their friend, their relative is being held and sometimes, these people are held in unknown places, they fall sick, because the relatives do not know where they are, they are not able to reach them, they are not able to give them assistance, they are not able to give them medical help and by the time the arrested people resurface, sometimes their health is so damaged that they die. So, I think that the best thing that we can do, we cannot prevent people, perhaps unlawfully, arresting others who they have fallen out with, that can only be prevented when Ugandans do learn to behave in a proper manner and that can only be learnt - it is something which can be in-built in us. But at least, if such a thing happens and the person is immediately handed over to the proper places where such people are supposed to be kept like to the Police, then their relatives are able to reach them and their friends are able to assist them. So, I would like to beg Hon. Delegates here, please do support this Motion and pass it.

MR. KYEMBA HENRY (Jinja Municipality West): Thank you, Mr. Chairman for identifying this corner at last. Henry Kyemba, Jinja Municipality, JIK Region.

AN. HON. DELEGATE: Point of Order! Mr Chairman, is it in order for the Delegates to repeatedly be cynical about the Chair? They have been continually starting their statements by saying, "at last, I have caught your eye" For the benefit of the Hansard, it would show that there is a bias in the Chair. I beg fellow Members that we should avoid this. Once you are picked, you do not expect to be picked all the time in this House. Thank you, Mr Chairman.

THE CHAIRMAN: The Hon. Member was, may be, expressing enthusiasm for having been given the Floor, but I think the point raised has some substance.

MR. KYEMBA HENRY: Mr. Chairman, I knew you would be very correct in your assessment of the decision. Thank you Mr. Chairman for giving me this opportunity to express my very strong support for the Amendment proposed by Hon. Omara Atubo. Mr. Chairman, this country has suffered through its agencies perpetrating numerous arrests of people in circumstances that eventually show complete disregard for human dignity. My region, my area, has so many cases of people detained, hidden, eventually murdered by agents of Governments that have been in charge of this country. This country, and I think the Amendment here goes some way in rectifying what has been happening in our midst. Hon. Members have given examples of places like Argentina House, Room 211 in Nile Hotel, near where we are sitting, garages and things like that and places like that. It is extremely important Mr. Chairman, that at least we should provide in our Constitution that anyone committing a crime should be arrested and taken to a recognized place for detention and even as we speak today, the very places of detention leave a lot to be desired. Many of them are overcrowded, and I think it is only right and proper that steps should be taken to make these detention centers, in form of Police cells, habitable.

Mr. Chairman, this Amendment will go a long way in bringing sanity to those executing arrests and detention and I would like to suggest that may be we could go a step further and make it a criminal offence for anybody to arrest and detain a person in a place other than that one recognized by the law. We have, Mr. Chairman, had cases of people being arrested and the arresting officer sometimes getting ransom from the relatives of the arrested people. These are situations which we cannot afford to ignore and I think we should support fully this Amendment so that we strengthen the Constitutional provisions for the protection and dignity of our citizens. Thank you, Mr. Chairman.

MR. ONYOK ETUKU (Moroto County): Thank you Mr. Chairman. I stand to support the Amendment as read by Hon. Omara Atubo. Mr. Chairman, first of all, I would like to allay the fear which has been submitted by Hon. Kavuma that some people are making this Constitution through

sentiments. I would like, may be, Hon. Kavuma to know that the sentiment arises from the bad history of abuse of Constitution and if they have affected some people, this is the right time for us to put it correct. Mr. Chairman, these arrests have affected many people in this country depending on which Government is in power. What may be NASA, has done to the West, the State Bureau might have done it to the North. In the East, it could have been either of the two.

Permit me to submit here that some people have been arrested in different circumstances and their bodies have not been found up to now. I start, for example with my own brother, Field Marshal John Okello, he was arrested in 1973 by the State Research Bureau and this was a period when you could not follow - you could not even identify yourself as being a relative. Tracing of these persons was impossible and up to now, we did not get him. I strongly therefore support this Motion to say, anybody arrested in this country should be taken to an identified place, to a lawful place where parents and relatives can follow. I strongly therefore support the Amendment.

MR. TIBAMANYA URBAN (Kashari County): Thank you Mr. Chairman. Mr. Chairman, Hon. Omara Atubo's Amendment does no harm if included in the Constitution. But there will be one thousand and one things that will do no harm if we include them in this Constitution. I thought our job was to make general principles and I thought the principles expounded for in 53 (1) where it says: "*no person shall be deprived of personal liberty except as may be authorised by law*". I thought that was sufficient enough to cover Hon. Omara Atubo's expansion.

Now, if we are to include everything in this Constitution, things like how do you deprive, where do you deprive, when do you deprive, who do you deprive and so forth, we shall be in great trouble. I therefore do not support this Motion.

Secondly, Mr. Chairman, it will be a source of a lot of litigation because as we were saying, a Chairman RC I arrests a robber at night and keeps him in his house overnight then the next day, you will ask Court and say, I was kept in a place that is not gazetted, it becomes very serious. So, let us leave some of these details for minor laws, in Parliament. Thank you Mr. Chairman.

MR. KIRENGA EMMANUEL (Mityana County North): Thank you, Mr. Chairman. I co-sponsored this Motion although I would have preferred my version which was reading like this: "*no person shall be detained in a place other than an institution publicly recognized as a place for lawful custody*". but it comes almost to the same thing but Mr. Chairman, I would like to allay the fears of some Hon. delegates who have said that there is already a law providing for this kind of situation. My answer to that is that, this is a constitution from which all other laws will be derived; all the other laws will be based on the Constitution. So, if we say in this constitution that nobody should be detained in a place other than a place recognized as lawful custody, then other laws which will be made, will take this account because this is a supreme law of the land.

Secondly, Mr. Chairman, I would like to differ from an Hon. Member of this House Hon. Tibamanya who says that this matter is petty. The place of lawful detention is very, very important to a person's freedom if we are to guarantee it. As it has been rightly pointed out in the past, people have been detained in boots, in fact, there is even an Hon. Member who was driven from Mityana to Kampala in a boot during Amin's time, he could have died, he was lucky to have escaped death. Mr. Chairman, I think since nobody - very few people seem to be opposing this, I would suggest that we put the question.

THE CHAIRMAN: Hon. Delegates, we cannot all speak on each and every Amendment. We shall be having more coming up as we go along. I think let us put a question on this one, the face seems to be quite obvious. The Motion is by Hon. Omara Atubo to give a provision in 53 to the effect that a person arrested, restricted or detained shall be kept in a place authorised by law. That will become Article (2) I think, and then the others shall follow.

(Question put and agreed to).

MR. KIRENGA (Mityana County North): Mr. Chairman, I would like to draw your attention, before you come to the next Clause, to an Amendment which is not listed although it was circulated.

THE CHAIRMAN: No, that one we shall have to get guidance from the Legal and Drafting Committee with regard to No. 12 which is an Amendment on 53

Clause (2). I think Hon. Sam Engola is not available, we cannot proceed with it unless there were powers of Attorney granted to a Member to proceed with it. Can I hear from the Chairman of Legal and Drafting Committee or Deputy Chairman, please?

MR. WACHA BEN (Oyam County North): Mr. Chairman, Mr. Sam Engola I understand is on Safari, but before he left, he drew my attention to this Amendment and asked whether I could stand in for him because I know the basic principles behind it.

THE CHAIRMAN: Is that not a Drafting matter really? Is it so substantive?

MR. WACHA BEN: It could be handled in drafting so long as the principle is accepted.

THE CHAIRMAN: The Hon. Engola's Amendment is proposing to put "*immediately*" after the word - to delete "*immediately*" and insert "*immediately upon arrest*". "*A person who is arrested, restricted or detained shall be informed immediately upon arrest, in a language that he understands, of the reasons for his arrest, restriction or detention.*" I think the fear here is that it is a question of clarity, but those who know how to read these documents, could you guide us whether really we should proceed with this proposed Amendment or the wording as it? Can I hear from Hon. Ringwegi please. Just a moment, there is a Member on the Floor.

BRIG. MOSES ALI: Thank you Mr. Chairman. I think the intended insertion of the words "*immediately upon arrest*", was intended by the Mover to only emphasise the timing, but I think in the construction of legal provision, when you talk about *immediately*, you are talking about the timing of the events or the particular incident. The incident here is the fact of arrest and then what should follow after that action is the information. So, there is really no need to repeat the fact of arrest because that is what is being qualified by the statement that follows the information. Thank you, Mr. Chairman.

Sir, I think really it may not be so useful for us to spend time trying to debate whether these words should be inserted. It is enough in Legal Drafting, Mr. Chairman, to say that a person who is arrested, restricted or detained shall be informed immediately. The emphasis or the essence is that, the information or the reason for arrest must be given to the person

who is affected and the immediateness emphasises the lapse of time between which the arrest is affected and when the information is given. We are now trying, by this Amendment to emphasis the question of arrest again, which is already known. So, Mr. Chairman, I think if this Clause is left as it is, it would not do any harm.

THE CHAIRMAN: I think let us proceed, unless Hon. Wacha you let us go on to - there was Hon. Kirenga said he went to the Committee with an Amendment which we have not listed.

MR. KIRENGA (Mityana County North): Mr. Chairman, I did not go to the Committee, but the Amendment was sent to the Clerk and I do not know whether it was considered by the Committee, but in my opinion, it is a very important Amendment. I would seek your permission.

THE CHAIRMAN: But you see really, we are beginning to make so many exceptions to our arrangement. If it was circulated and then it was not discussed through the Committee, if we continue with these numerous exceptions, we shall end up in a situation where we do more work than we think we are going to do. Could I hear from the Deputy Chairman of the Legal and Drafting if this matter - I do not know whatever the Amendment is?

MR. KIRENGA: Can I read it Mr. Chairman first so that he can remember whether it came?

MR. WACHA BEN: Mr. Chairman, Hon. Kirenga says he did not come to the Committee. So, really I am not aware about this Amendment. May be he can move that he brings it from the Floor.

MR. KIRENGA: That is why I am seeking your permission.

THE CHAIRMAN: No, but you see that is why the Chair is being reluctant because I think this will be the second one you have brought without going through the committee and it is better that we make Rules and adhere to them really. *(Applause)* It could come at the Consideration stage. Let us go to No. 13. There is a proposed Amendment on Article 3 by Hon. Abbey Mukwaya and Dr. Masekura, 53 Clause (3). Could Hon. Abbey Mukwaya please move the Amendment or read it out and see whether it is seconded?

MR. ABBEY MUKWAYA (Busiro County East): Thank you Mr. Chairman. Mr. Chairman, I beg to move an Amendment, Article 53 Clause 3 (b) page 20, by deleting 72 hours and inserting thereof 48 hours. I beg to move.

THE CHAIRMAN: Is that seconded. Can you give your reasons.

MR. ABBEY MUKWAYA: Mr. Chairman, 72 hours is quite a long time as proposed in the Draft Constitution and infringes on the liberty of the person for too long without sufficient reasons in my view. If you think of 24 hours as some of the Members were trying to propose, that would be the ideal, but in our circumstances, it is not easy to bring a suspect to Court within this limit of time, given, especially in rural areas where logistics and personnel may not be available adequately. 24 hours may be easy to respect in urban areas, but since we are making the law for the entire country, I think it is fair to look for a more reasonable period. This is my Amendment, to substitute 72 with 48.

Several Hon. Members who had proposed to amend this Article by inserting 24 hours, have withdrawn their Amendment in support of mine and I have the support of Hon. Musekura Ndaruhutse, who is my co-sponsor, but unfortunately, he is not in the House now, but since it has got enough seconders, I beg to move therefore, that Article 53, Clause 3 (b), be amended accordingly. I beg to move, Mr. Chairman.

MR. ASTON KAJARA (Mwenge County South): Mr. Chairman, I beg to support the Motion of the Amendment that the period through which somebody should be brought before a court of law should be 48 hours and not 72 hours as is enshrined in the Draft. The reasons, Mr. Chairman, are that a person is presumed innocent until proved otherwise. Secondly, Mr. Chairman, Justice delayed, is justice denied. For a person to be detained 72 hours, on mere suspicion would be an infringement on his personal liberty, bearing in mind that, he may after all be acquitted or released if he is tried before a Court of Law.

Mr. Chairman, I also support this Motion because it has been the practice of Police and other security agencies, whenever they want to punish someone, including a traffic offence, including trivial offenses, they would usually arrest you on a Friday evening, well-knowing that Magistrates are not available on

Saturdays and Sundays. So, Mr. Chairman, in order that this practice be curtailed, I support that somebody arrested, should be brought before a Court of Law within 48 hours. To argue that that is a very short period, no opinion is not logical, in that it is the duty of Government and the duty of state to bring justice and to do justice to the people. It is the duty of Government to make sure that Magistrates and other justices of peace are available to the people and as soon as possible. I therefore, Mr. Chairman, wish to support the Amendment. Thank you.

MR. KASOLE BWERERE LWANGA (Buwekula County): I stand to oppose the Amendment. First, the intention of the whole exercise of making this Constitution is to make Uganda a better place to live in. I cannot see a situation whereby, instead of keeping Ugandans in prison for only 24 hours, then you increase to 48 and you think you are making a better place to live in

Secondly, given the situation of Uganda, if you make it 48 hours, it goes without saying it will automatically be about 70 or 80 hours because we are not yet up to the standard of efficiency in handling public matters. Therefore, I think we should keep the 24 hours as the present law says. Thank you very much, Mr. Chairman.

MR. KAYIZZI ASANASIO (Kassanda North): I beg to move an Amendment that we keep 24 hours.

THE CHAIRMAN: No, now there is a new Development. So, I take away the Floor from you. The Motion by Hon. Abbey Mukwaya is subject of an Amendment by another Member, that the figure 48 be deleted and be replaced with the one of 24. Is that correct? *(Applause)*. So, now what we do and that has been seconded so what we do is now we debate the proposed Amendment to the Amendment. No, let us first of all, I mean before we even start debating, we cannot talk of information. Let me give the Floor to the Hon. Member for Butembe.

MRS. SEKITOLEKO VICTORIA BALLYEJUSA (Butembe County): Thank you very much, Mr. Chairman. Mr. Chairman, can you protect me because there is too much talking on the Floor?

THE CHAIRMAN: Hon. Members, I think we should respect when other Members are on the Floor.

MRS. SEKITOLEKO VICTORIA: Mr. Chairman, I wish to support the Amendment made by Hon. Kasole. Member for Buwekula - (*Applause*) - specifically because when we discussed this thing in my constituency, we spent a lot of time talking about it and I was advised that I support like so and I was supposed to go on when we talk about the Courts of Law to suggest that Courts of Law should join those offices which work 24 hours a day, 7 days a week because the real reason people cannot be taken to Court during a weekend is that, the magistrates have gone to enjoy the weekend. It is much better, in view of the people of Butembe, for Government to pay more Magistrates and get them to work all the time so that the people can enjoy the good Uganda as Suggested by Hon. Kasole. I beg to second, thank you very much.

MS. ADIO WINIFRED (Women Delegate SOROTI): Thank you, Mr. Chairman. I am one of the Members who had put an Amendment for 24 hours and it was promoted to 48. As for now, Mr. Chairman, and Hon. Delegates, I rise to support the amendment of 24 hours and why? Because, when I went home, my people had the same view that once a suspect is taken in, he undergoes a lot of torture, mentally and physically and any other forms of torture when he is in and that we know very well. Our history has that kind of thing; once somebody is taken, he is tortured without limit. The other lesson is that my people are of the view that the longer the suspect stays in, he is tortured without limit. The other reason is that my people are of the view that the longer the suspect stays in, the higher the risks of being kidnapped and eventually disappearing mysteriously takes place because we all know in our history that people have always been arrested and eventually they disappear to unknown places. For example, in 1988, many of our boys were arrested, taken to unknown places. We were told they were taken to Kiburara Farm prison and up to-date, they have never returned. The other is that our conditions of living generally, are not good. Whether you go to a police cell or you are taken to a military cell or it is a prison cell the conditions are the same. The sanitation system is very poor therefore, the suspect is exposed to risks of getting disease. Many of them when they go back, they go back with T.B. or typhoid for that matter because sanitation is very poor and the other is that - you will find the family of the suspect is disturbed because of moving up and down trying to find a way of getting back the family member home which is no good for a member who

may be a bread winner. It will be no good for the family. Therefore, Mr. Chairman and Hon. Delegates, I do support the Amendment of 24 hours. Thank you.

LT. COL. KIIZA BESIGYE (NRA Delegate): Mr. Chairman, I oppose the Amendment. I do so, not because I do not appreciate the suffering of people who are unnecessarily detained because I have been detained as I informed this House, in an unlawful place by unlawful people for more than a month without being told even what I was being detained for and I know what suffering it imposes on one. But I also appreciate the circumstances of our country. What this provision is saying is that you shall not be detained without being brought before a court, not later than - I would like to believe that subsequently laws will be made to indicate if you are detained in whatever circumstances, what period of time you may stay without being brought to court.

Okay, there are innovations like have been proposed by Hon. Sekitoleko that maybe courts work on Saturdays and on Sundays and on public holidays and whatever but even while those are going on, what we are providing in the Constitution is simply an allowance that you may not be kept in the place of detention for more than a certain number of hours. It does not mean that if we provide here that you are detained for more than 48, that you ought to be detained for 48 hours before you are brought to court. I would like to have a Constitution that provides reasonable allowance for all situations without finding difficulties subsequently in Parliament or in any other place of Legislation. Therefore, - of course you ought also to observe that subsequently we are going to say that if you are illegally detained - which means if for any reason you are detained more than a certain number of hours, then you shall be compensated. In our circumstances, as I have said, even before we go through the various innovations. If we make it a Constitutional provision that you may not be detained for more than 24 hours only, we may find ourselves in a situation that we may not be able to live with. (*Interruption*) I, therefore, Mr. Chairman, would like to uphold the 48 hours. I subsequently would like to see Legislators and Administrators making such arrangements to minimize the number of hours that one may stay in prison before being brought to court. But before all that happens, I think we will be making a provision that is rather difficult to implement. I thank you Mr. Chairman.

MRS. OGWAL (Lira Municipality): Point of Clarification. I am seeking clarification from the Mover and possibly also from the Committee that helped to draft the Amendments because I remember on that day, it was agreed that the phrase "*as soon as*" be replaced with "24 hours" and "*but not later than 48 hours.*" So, "*as soon as possible*" was supposed to be deleted and replaced by "*within 24 hours but not later 48 hours.*" So, I do not know whether this was now split into separate Amendments, Mr. Chairman.

MR. WACHA: Mr. Chairman, I think we have been raising our hands - me and other members of the Committee because we wanted to explain to you, Sir, the circumstances under which this Amendment came. Mr. Chairman, we met a number of Hon. Members came up with a proposal that the number of hours provided for under this Clause be 24 hours. We had an extensive and exhaustive discussion as to the practicability of implementing the proposed 24 hours. We looked at the logistics of our country, we looked at the administrative practicability of the implementation of the 24 hours and we eventually agreed with the Movers of the Motions, all of them, that the 24 hours be moved to 48 hours. That was the basis of the 48 hours. The Mover, Hon. Mukwaya for example, had proposed initially that it should be 24 hours. That is the information I wanted to give you. Some other members of the Committee could assist in this matter too. Sir, we also looked at other Constitutional provisions from other countries. For example, Sir, in the Ghanaian Constitution, there is a provision for 48 hours instead of 24. Ghana also used to have 24 hours, but then the 1990 Constitution moved it to 48 hours.

THE CHAIRMAN: Now, do you have memory of the position as outlined by Hon. Cecilia Ogwal?

MR. WACHA: I think Hon. Cecilia Ogwal might have misunderstood the agreement which was eventually reached because Hon. Cecilia Ogwal's Amendment wanted specifically to remove "*as soon as possible*" as not being indicative enough of the sort of timing that was implemented but this was then incorporated into the 48 hours Mr. Chairman.

THE CHAIRMAN: Okay, if we can benefit from this information Hon. Cecilia Ogwal do you want to pursue that further?

MRS. OGWAL: Mr. Chairman, I specifically

sought that clarification because I felt that adequate information was given to the Committee when we agreed on 48 hours. We felt that 24 hours will be too restrictive considering the limited facilities our police force has and also the aspect of distance between the police station and the place of arrest. So, Mr. Chairman, I feel that it would be a waste of time for us to discuss 24 hours when we know that practically it would be difficult to implement. *(Applause)* We should instead, Mr. Chairman, just go straight to debate the Motion on the Floor which has been moved by Abbey Mukwaya Mr. Chairman. Thank you. Can I put the question? *(Laughter)*

THE CHAIRMAN: Yes, you are entitled to move a Motion that the question be put - yes you are right. Okay, now let us put it this way. We have on the Floor a definite amendment which was moved on the Motion as previously moved by Hon. Abbey Mukwaya and that was an amendment to delete 48 and insert 24. Our rules require that we deal with the latter one first and dispose of it because if we moved 24, then there is no point discussing 48. Now, the mood seems to be that let us vote on this one - on the Motion for 24. We have received information from the Committee and also other Members who attended as to why it is considered appropriate that we do 24 but our rules require that we pronounce ourselves on this one. Now, the Motion is that the Motion originally moved by Hon. Abbey Mukwaya be amended by deleting 48 hours and inserting instead 24 hours. That is the Motion now on the Floor and we vote on that one and then decide what to do next. I do not know whether the Members are following properly. The point is this, we have two Motions: the original Motion by Hon. Abbey Mukwaya that we should have 72 replaced by 48. That Motion when it was being debated, a further amendment was proposed that we should delete 48 and substitute it with 24. Now, our rules require that we vote on this latter one first. So, now, I will put the question.

(Question put and negatived.)

THE CHAIRMAN: Order! Hon. Delegates, our rules provide that we make our consensus by voices but if there are those who think that the chairman - his hearing was not quite sufficient, are saying that the matter should be resolved by division. But from what I can see from the Floor of those supporting to seek division, I think we shall be wasting a bit of time. *(Applause)* Order! Order! Now, the Motion on the

Floor - Order! We now go back to the original Motion as moved by Hon. Abbey Mukwaya. The question is that 48 does replace 72. That is the summary of it. I now put the question.

(Question put and agreed to.) (Applause)

THE CHAIRMAN: Hon. Delegates, that disposes of the Amendment by Hon. Mukwaya on Clause 3. The hours have been changed from 72 to 48. We have a further Amendment on Clause 3 and this one is being sponsored by two Members - Hon. Wasswa Lule and Hon. Kirenga. It is intended to insert a new Clause and I will give the Floor to either Hon. Wasswa Lule or Hon. Kirenga. I do not know who will lead the discussion. Hon. Wasswa Lule.

MR. WASSWALULE (Rubaga Division North): Thank you Mr. Chairman.

What we propose is that on Article 53, immediately after Clause (3) to insert the following new Clause: *Where a person is arrested, restricted or detained:*
a) The family and lawyer of that person shall be allowed access to that person b) That person shall be allowed independent medical treatment and c) the family of that person shall be informed of the arrest, restriction or detention.

THE CHAIRMAN: Is that seconded. Okay, you are seconded. I can see Hon. Cecilia Ogwal and Hon. Ngobi there. Please go ahead to speak to the Motion.

MR. WASSWALULE: I think the Motion is fairly clear - allowing access of the family and the lawyer not only allows the accused to be able to prepare a defence but timely access to an accused also helps to reduce the inhuman and degrading treatment while people are in detention. My experience is that people are more likely to be maltreated during the early hours of their detention rather than later. So, allowing their family and lawyer access, actually helps against that. The question of informing the family is also important. My original Amendment had been of timely informing of the family but I was persuaded to say that the family shall be simply informed. This is because somebody could travel to some part of the country where he has got no relatives and he commits an offence, he is convicted and his family only know of his whereabouts after the individual has been released. So, it is important that the family who may be worried about the whereabouts of their relative or friend should be informed of

the person's whereabouts so that, that worry is appeased.

The question of medical treatment - it ensures that human dignity is accorded to prisoners. Now, our police cells, not to mention our prisons, are not the best places to be in and sometimes medical treatment is not readily available but if the accused is allowed a doctor to treat him, I think it augurs well for human dignity. Now, I think for those reasons and others which I think my co-sponsor will also contribute, I would like to propose that the House adopts this Motion.

THE CHAIRMAN: The question is that Article 53 be amended by inserting a new Clause (4) in the terms read out by the Mover, Hon. Wasswa Lule.

MR. ERESU (Kaberamaido County): I support the proposal to insert this new Clause but I think also these things are already there in place except probably they have not been effectively utilized. So, for purposes of entrenchment of freedom and the rights of the person as a human being, although he is in jail, maybe we can just include a Clause. I do agree with all the provisions here, especially the one which allows for a person to be allowed an independent medical treatment. Most of our people in detention and in very many cases, as have been seen, even when a person has finished his sentence and comes out from jail, they lead a very poor life and very often they die. I think for the purposes of making citizens of this country have confidence even in our jails such that even if a person is in jail, we exempt him to come out reformed and live a better life for a long time to come. We can only give this confidence to the people of Uganda when we allow them access to medical treatment while in jail. Also to allay the family anxiety that may be there, while the person or maybe one of the members of the families in jail - members of such families should be allowed to visit the prisoner because that way, it gives a kind of psychological uplift and confidence also to that family and also confident that that family will have and people in general, towards the government of the day, I think this kind of arrangement will, to a very large extent, create and develop a sense of respect and confidence to the governments of the day in the future to come. Thank you very much.

MR. KAWANGA J. (Masaka Municipality): Mr. Chairman, I support this Amendment wholeheartedly. First of all, we must emphasise the fact

that when somebody is arrested, he continues to be assumed to be innocent until he is proved guilty. Our history is that when somebody is arrested, people tend to feel that he is already guilty and treat him as if he has already been convicted. The fact that somebody has been arrested, should be a public matter and surely the people, the members of his family should be informed so that he can always be able to explain to them why he has been arrested and seek redress and assistance from them as soon as possible. What normally happens in practice these days, somebody is arrested, he is immediately tortured, spirited away and members of his family become desperate to find out where he is. But if the practice is that, they should be informed and the lawyer is informed, then the process of the law would take its course without rendering the person involved, giving him a lot of problems to explain later on.

Now, what bothers me is the second question about *independent medical treatment*. I support it but at whose cost? Because if you just leave it like this, you may find every prisoner who is put in there, the first thing he asks for is independent medical treatment even for ailments which he may have contracted long before he was put in prison. But I think he should be allowed access to medical treatment, but at his own cost - it should not be within and of course finally, the question of informing somebody about restriction, detention has one other additional advantage in that it prevents immediate torturing of somebody who has been taken to prison. There is a tendency that immediately somebody is taken to prison, he is given "Chai" - which means eating from him whether he is innocent or guilty. There is no question. But if somebody knows that people will be informed about the arrest, the tendency to assault that kind of person will be minimised. I support the Amendment.

MR. RWOMUSHANA (Bujumbura County): I support the Amendment and I have been persuaded for two reasons. The first reason is that, apparently, public health is not even adequate for those who are free. It, therefore, becomes a problem for those who are detained or whose liberty is constrained. I am of the view, therefore, that the detained person be allowed access to private medication. At whose cost? It is still a point of conjecture but the government should foot the bill, after all, he is already detained - where does he get the money from? Another reason why I support this is that if he is allowed access - if the family is allowed access to

him, in one way or the other, detriment those who would torture him and this is because it becomes public information and besides, the public also has access. You can name the press for instance because people are allowed to have access to him and since things become public, it definitely becomes a detriment for those who would torture him. So, I support the Motion wholeheartedly.

MRS. KAZIBWE (Kigulu County South): Thank you Mr. Chairman. I support this Amendment but with a bit of reservation on 4 (b). Mr. Chairman, it is correct that a family must be told when its member has been restricted or arrested or detained but Mr. Chairman, I have a problem with (b) which says that that person shall be allowed independent medical attention. I would like to move later or ask the Mover to amend it. Mr. Chairman, every Ugandan must be accorded or given the necessary medical attention. How do you expect somebody, Mr. Chairman, who has been arrested, restricted or detained without his own wish, to look for his own treatment? Mr. Chairman, I also want to bring to the attention of the House that when one is arrested, they may appear to be okay but they must be given medical attention in that when somebody is restricted or detained or even put in a cell, they must be regularly examined because detention or imprisonment unmasks diseases which people may not be aware of so that when you are there, the doctors must really examine you to make sure that you get the necessary attention. Who pays for this medical attention? The government has to foot it. Why? Mr. Chairman, if I am arrested, restricted or detained before I am tried, I am innocent. If I am found guilty, then I will pay for that treatment through the punishment that will be given to me. If I am found innocent, let the state pay for my innocence before I am proved guilty. The state must pay for this attention. I want to qualify this further and say that, while we are debating this, we are not oblivious of the fact that we are not able to pay for Medical attention to all our citizens, even those who are law abiding. But if my freedom is taken away from me, I must get attention before I am proved guilty. But I would like the Mover to know that medical treatment is a very small fraction of medical attention and maybe he should actually look at that. The independence of it, Mr. Chairman, also has a problem. I do not know who is qualified to give medical attention to the people in the prison. There is also the issue of somebody who is detained deliberately taking medication to claim that they are not fit to appear for trial or to claim that they are

mentally sick. There are medications which can do that. Mr. Chairman, this part (b) is a bit of a problem and maybe may need to be looked at further by experts in this field to advise the Drafting Committee on how best they can put it. Thank you Mr. Chairman.

MR. MULINDWA (Bukoto West): While I support this Amendment, I feel that part (b) is not clear. It is a bit vague. I would wish to call upon the Movers, if they could agree with (a) to be changed to read probably as follows: "*The family, the lawyer and the doctor of that person shall be allowed access*" - something like that but if we leave (b) - "independent medical treatment" is not defined. Independent, how? I do not think medical treatment cannot be defined in terms of independent, it is medical treatment. I think what they wanted to bring out, is private medical treatment which I do not think if we look at the Prisons Act or something, would allow. So, if the Movers could agree with me and we include a doctor in part (a) I think that one will cater for the interest of the Movers.

MR. BASOGA: Thank you very much Mr. Chairman. I do not seem to have problems with these Amendments, except that the first Amendment, part (a) seems to be covered in Article 53 (1), (2) - where they talk of a person who is arrested, restricted or detained shall be informed immediately in a language that he understands of the reasons of his arrest, restriction or detention and of his right to a lawyer of his choice. So, if we are talking of a lawyer, I think that provision covers - If somebody is entitled to a lawyer of his own right and of his own choice, then it means that lawyer must have access to the prison. So, I do not know whether we are not making a repetition here. Perhaps the only emphasis that the Mover is talking about is accessibility by the family and the lawyer but that Article seems to cover him.

Then I have a problem with No. (c), where the family of that person shall be informed and I am looking at a situation of somebody who had gone to do business in Busia and of some two boxes of soap. Now, I do not know whether it will be the police to go to Kasese and inform the family and I do not know on whose transport - that you know, your husband when he went to Busia, he was caught. So, who meets this expense? Are we going to put up public announcements, are we going to use the police vehicle? Who meets this? Is it still the tax payer's money? You know, this is still a problem to me. But of course, I would like the dissemination of information to be

effective so that everybody knows somebody has been arrested. Do we put an advertisement in *The New Vision* and *Weekly Topic*? I would like this to be clarified so that we know of the channels of communication and the details that we are talking about. I do not know what these are but let them be explained to me so that they can be clear and then I will support this Amendment. Thank you very much Mr. Chairman.

MR. ATWOKI (Youth-Northern Region): Thank you very much Mr. Chairman. I want to correct one wrong impression - I am not young. I am old enough to be a honorable. (*laughter*) I support this Motion because of basically three reasons. One, the idea of inserting this Clause into our Constitution is a good idea because despite its existence in our Books of Law, it goes further to entrench the idea of fundamental human freedoms into our Constitution which is very important and then secondly, on the question of medical provision - independent medical provision for the arrested or detained person, I believe that this is quite important also. Because, basing on our experiences, we have found that even in our prisons, there is no adequate medical provision which is normally accorded to the inmates. So, it is important that if the inmate can have access to independent medical provision, it should be catered for. Secondly, our leaders also lack the political will to provide medical attention to their political enemies. So, you will find that this could even provide room for certain ailments which were not supposed to kill a person, killing him. Finally, I would also like to observe that, information to the family is quite important, although, I do not know who will foot the bill but it is necessary because this would also provide for facilities to prepare the family and the arrested person to pursue the course of justice. Thank you very much Mr. Chairman. That is my contribution.

MR. OKANYA (Butebo County): Thank you very much Mr. Chairman. I stand up to support the Motion. Recently, there was a press statement in the newspapers saying that Uganda is one of those countries which ranks highest in prison deaths. It is issues of this nature that we should seek to address as we write this new Constitution. There is no harm in including everything we deem useful in as far as enjoying our rights is concerned in this new Constitution. This Amendment to me, serves to strengthen and improve on the enjoyment of those rights. I support the Motion very strongly because there are

many instances when people have been arrested, kept in places that we do not know. Fortunately enough, we have now approved that they should be arrested and kept in places which are known to everybody. Therefore, it lies on us to insist that these places should be accessible and the whole channel of communication should be completed by letting these persons have proper medical attention while in detention and the persons who are their relatives should be informed so that we complete the cycle of the enjoyment of these freedoms and rights. So, I support the Motion very strongly. Thank you very much Mr. Chairman.

MR. ONEGIOBEL (Jonam County): Thank you very much Mr. Chairman. Mr. Chairman, I support the Motion wholeheartedly and disagree with the reasons that have been given about for instance (b). The problem of (b) does not arise. To me, it looks clearly that "independent" means "private" and that should not need any further explanation. If we wanted to, we could change the word "independent" to "private", by his or her relatives. Mr. Chairman, it is common knowledge and common experience today that even if you are admitted in a hospital like Mulago, your people have got to be ready to go and bail you out on the issue of drugs. So, to expect that relatives will go and take treatment to a prisoner, is doing the expected.

On the issue of information to the relatives Mr. Chairman - that of course, must be the responsibility of the arresting authority because how else could anybody expect a relative or someone else to say - "Onegi Obel is in prison" other than the people who have arrested him. I support the Motion.

MISS. KABIRISI LUBERENGA (Women Delegate-Bushenyi): Thank you Mr. Chairman. Mr. Chairman, I wish to support the Motion on the grounds that first of all, 4(a) which says that the person should be allowed access to these people - the lawyer and the family - will deter any tendency of people being tortured. We have had nasty experiences in the past where people are taken in and tortured endlessly and when it is said, the authorities deny it but if we have the family and the lawyer having access to this person, this will be stopped. On the issue of medical treatment, I believe the person, whether guilty or innocent is still entitled to medical care. On (c) - the family being informed, I think it is imperative that the arresting authority gets information to the relatives who happen to be innocent. So,

the issue of who foots the bill should not arise. The people who are being informed are not guilty - whether the person who committed the offence is guilty or not. So, Mr. Chairman, I beg to support. Thank you.

THE CHAIRMAN: There is need for clarification by Member for Padyere. Could you indicate what you would want to be clarified on please.

MR. RINGWEGI (Padyere County): Point of Clarification. Mr. Chairman, I have heard Hon. Members rising to support this Motion and in the course of the debate, I am getting a lot of difficulty on the following issues Mr. Chairman and I would like the Hon. House to clarify these issues so that I understand what to do with the proposed amendment to this Motion. Mr. Chairman, the first Point of Clarification I am seeking is this - In the light of the fact that we have already passed an amendment inserting the venue of detention or the places where legal custody will be provided for by the Law, is it still necessary that the state should be encumbered with the obligation of having to inform the families of these suspects. Mr. Chairman, the Clarification I am seeking is this that these public places which are provided for by Law are already public enough and that any member of the family who wishes to know where the person is detained would not be denied access. Therefore, Mr. Chairman, why should we go further to over burden the state to try and impose on it obligations to look for the family members and inform them? The second point Mr. Chairman, I would like to be clarified upon is also very serious. We are talking of private or independent medical treatment being given to suspects. The principle seems to be very noble and very human but Mr. Chairman, I would like to be clarified, in a situation like this, if there are people who have been conspiring to commit a very serious crime against the state and one of the conspirators is arrested, the other conspirators are still at large. This other conspirator who is arrested knows that if he is tried, the sentence for his crime is death. The other conspirators who are at large, also know that if this man is left there, he is going to disclose their identity and they also know that the Constitution allows this man to get independent medical treatment. So, they come and say - look this man here must be badgered off, we are going to give him medical treatment. When they come, they inject him because the Constitution allows him to be treated independently and the man dies. The state would not have been protected. Now,

Mr. Chairman, what shall we do in that case? Are we now protecting the individual or are we protecting criminals to live in society? These are the points I wanted to raise. Thank you Mr. Chairman.

MR. KABUGO (Nakaseke County): Mr. Chairman, I wanted to pass a bit of information to the previous Speaker. I have got a cold. I am sorry my voice has gone. The information I wanted to pass over to the previous Speaker is, quite a number of suspects are arrested at a specific point and transported to different places of detention. You can have somebody detained in Kampala Central here and then another one is taken to say Mbuya. Others are sent to Kiira Road, and Jinja Road Police Station. This gives a very big problem to their relatives to trace them. This is, if there is a law which governs those who are detaining those suspects to inform the relatives, it will be a good thing that they have some means of notifying these people. But when it comes to medical treatment, this is also a very difficult issue because I have been to Mulago on a number of occasions to find a person brought from Luzira - a lawful detention place where there are full time doctors and they cannot even treat the patients inside the prisons and these prisoners are brought to Mulago simply to die. I have seen them thrown from the lorries down onto the floor of the hospital as if they are throwing gunny bags and these people, some of them are not even put on or dressed at all. They are treated as if they are animals. I think something very serious must be taken care of and looked into this. Thank you.

DR. KABAYO (Kassanda South County): Thank you very much Mr. Chairman. In any civilized orderly society, it is proper to be concerned to prescribe for a humane treatment of prisoners. So, Mr. Chairman, I speak in favour of the proposed Amendments except that I wanted it to be worded more carefully. I am concerned about the difficulties that may arise in interpreting words like access because supposing a relative came and wanted to live with the prisoner, I do not know whether that will be access also! Also the fears that has been expressed by others in allowing independent medical treatment. I also share the views by Hon. Basoga about who and the method of communication in informing the relatives of those arrested. Apart from the misgivings on the usage of the words in the proposed Amendments, I wish to support it also. Thank you.

MR. OCHYENGH (Kapelebyong County): I would also like to support the Motion on the grounds that it looks like it was some kind of oversight by the Constitutional Commission because when you go to 71, I think the spirit is there - This is under the Human Rights and Freedoms during a state of Emergency. So, I think the Commission had it in mind. Because 71 (b) says: "*The spouse or other available next-of-kin of the person restricted or detained shall be informed of the detention or restriction within 72 hours after the commencement.*" Now, even 71 (a) has that spirit that the person should be informed within 24 hours. So, what this Amendment does, is to fill in, in the case of arrest also - whether a person is arrested on a criminal charge or whatever it is, this other one covers detention under a state of emergency. So, it looked like it was some kind of oversight which this amendment certainly fills up. Now, my only problem with it is to make the order natural maybe (c) would be (a) and (a) would be (b) and (b) would be (c). Then instead of "*family*" should be "*next-of-kin*." If the Mover can agree to those proposals. Otherwise, I would really want to support the Motion on the Floor.

MR. ETYANG (Tororo County): Thank you very much Mr. Chairman. Mr. Chairman, the proposed Amendment would probably be one of those most quoted from this Constitution when it comes to be implemented. Consequently, I would like to draw the attention of my Colleagues to the fact that these particular provisions as well as applying to the citizens, are also going to apply to the non-citizens. In other words, people from as far as United States and Australia. Now, I want my Colleagues to relate the suggested provisions to that situation in case of family here and I support the immediate Speaker before me that perhaps you could use the word "*next-of-kin*" because for purposes of visitors here, the next-of-kin will be assumed to be the diplomatic mission accredited here which has got a consular obligation to such visitors. Secondly, Mr. Chairman, when it comes to Independent medical treatment, if we are going to end up here with an American millionaire, and you have allowed him in (b) to have an independent medical treatment, you should be in for a bill. Thirdly, Mr. Chairman, I would like to suggest very strongly that perhaps as well as changing the word "*family*" to "*next-of-kin*" that the Drafters should actually reflect this position that how are we going to cover this possible financial coincidence in relation to the people I have referred to.

Now, with regard to (a) - maybe if the proposers are agreeable to the "next-of-kin" expression instead of the "family", could be put under (a) because as it stands right now, is it joined? Has the family to be with the lawyer together? I think it should be in a such way that it is either the family or the lawyer who would have access because not only will this be in respect of foreigners, for example, as I have heard Mr. Chairman. It is just possible the sort of people that maybe arrested, as anticipated here, may not even have a family, may not even have lawyers and that stresses actually the point about the need to use the next-of-kin because when somebody is admitted into these restricted areas, I suppose he will be asked to whom say, the information should be given and with regard to the idea of how to inform, I suppose to avoid a situation really where first of all, the address of the person to be informed may not be known or that the expenses that are for him to inform such a person will be very exorbitant. I would suggest that perhaps publicity of some sort or gazetting would constitute such information. Thank you.

MR. AKURE (Jie County): Mr. Chairman, it has been a normal practice in various governments that somebody is arrested and the family or relatives are denied accessibility of seeing that person in prison. Mr. Chairman, even when you are arrested, some of these fellows make your arrest as a trade link in between. At times they call a parent or the relatives that, give us something and we want to give you information why your son or your husband is arrested. I think, Mr. Chairman, if I can quote an example. Some time - mid seventies, you might have heard this because this happened in Eastern region where somebody called Toxin was Provincial Secretary during Amin's time. This fellow was arrested at around 10.00 O'clock. I happened to be in Mbale. They just picked him from the office, drove him somewhere towards the mountain and now when people wanted to see where this man was taken, the military police were already chasing the public - that why do you want to see where we are taking this man? Today, that man is not seen, whether he is alive, whether he is dead. I do not know. So, Mr. Chairman, I think we must be given accessibility of seeing a person who is arrested. Whether he is in the Police, whether in prisons but the idea of denying a person the right - I do not see the reason why we call human rights. We have talked of freedom and what, but we must be given this freedom so that we know what is happening. In certain cases, Mr. Chairman,

you find somebody is arrested and tomorrow when the case is heard, it is just very useless. It does not even reflect somebody to be taken to court. Then when you come to medical side, I think Mr. Chairman, the state must be responsible. Why should you arrest me and you are not taking care of me? Now, when I die in the cells before I am tried, whom to blame? I believe the state must be responsible for treatment and whatever happens, the state must be responsible. Thank you Mr. Chairman.

MR. NDEGE (Luuka County): Thank you very much Mr. Chairman. I would also like to support the Amendment. First of all, even today, when a person is detained, and people want to go and see them, all these organs create a lot of reasons: Oh! the case is very important, the big people upstairs are involved in this thing - it is very sensitive so you cannot see the person. So, we want to remove all these kind of silly excuses for people to see their people who have been detained. So, I say that we allow the people to see them and they should be allowed to have access to a lawyer. Now, on medical treatment, I would say that we should allow both. Because there are those who can afford to pay for their own private doctors and there are those who may not be able to have such access to a doctor. So, I think we should allow both independent private doctors and adequate government treatment. That I say because there was a case where this man was very sick. He wanted his doctor to see him, they said no, this doctor might poison him but the government doctor will not poison him because he is good. I do not see why your family doctor should poison you and when he went to Mulago, nobody was allowed access to him because there is an *askari* guarding him, in case he might escape. So, a lot of inconveniences. Some people have got very complicated diseases, only your personal doctor can attend to. So, I think, this kind of situation be allowed.

Thirdly, the information should be available - I quite agree with the Member from Nakaseke. If you commit an offence and there are five of you, each one is different, taken to a different location, and it takes days and days to find the person, wherever you go, they say they do not know the person and so it is up to government to say - look we have this person here or there. The other day, they arrested my RCs, I went to Iganga, I went even to the DA, by then they were called DAs or Government Representative. We went round the whole of Iganga and they all denied where these RCs had been kept. Now, I think, I am

Legal and Drafting Committee as we agreed, before we begin speaking on it after the Mover has, may be moved it, an opportunity be given to the Legal and Drafting Committee to also sum up the reasons and various aspects of the Debate that may have transpired in the Committee so that this gives a background to the whole House about the various views that came and were, may be, dismissed and so on. I think this would help the House a little faster and also to be sufficiently informed not to repeat what would have otherwise been discussed.

THE CHAIRMAN: Now, that is a good proposition. But in fact that is what we have been doing. What we shall be starting with tomorrow, to my understanding is that we shall receive a report from the Legal and Drafting Committee in two ways. A report on the matters we have discussed and found that it is necessary for us to refer to the Committee to come back with the Report, and two, their Report in relation to the other Articles 54 to 59. Now we shall then debate in light of those two Reports.

DR. KANYEIHAMBA: Point of Clarification. Thank you, Mr. Chairman. I think that the gist of Hon. Dr. Besigye is that before the Amendment is moved, the Legal and Drafting Committee should

have the opportunity to explain how the Amendment came to be allowed to go forward and issues involved in that Amendment in order to guide the House. For example, Mr. Chairman, I was very, very grateful that the Vice Chairman of the Committee insisted on this Amendment regarding whether it should be 24 hours or 48 hours, because there was a background to it. If the Legal and Drafting Committee had given it, I think we could have been more expeditious. As you can see, it was a compromise. So, Mr. Chairman, I think that the suggestion by Hon. Besigye is a very good one and the idea is that at least we should guide the Assembly at the beginning before the Debate is moved by whoever is the Mover. On today's meeting, Mr. Chairman, it is suggested that the Legal Committee after lunch should meet with those who are making Amendments on 54 to 59 in this very Room. I would suggest at 3.00 p.m.

THE CHAIRMAN: I think that clarifies the position and the point raised by Hon. Dr. Besigye has properly amplified by the Chairman and the point is taken. That being so, we come to the end of today's proceedings and I adjourn until tomorrow 8.30 a.m.

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not a small man or the Government Representative is not a small man but somehow the CID people decide to keep these people somewhere. So, I say they should be allowed access and I think these are fundamental rights which we are trying to fight for. That is why we are all here to see that justice is done to everybody. That nobody in government takes advantage of any sort to deny a person a right whether he is a criminal or not, to be heard, seen, or present his views. Today we have seen this big man Abiola, he won an election, he is not even allowed medical treatment. The government says, he is alright. The Medical Association says he is not alright. Now, this kind of situation really can be embarrassing. We do not want to go back to this kind of situation. Therefore, I support the Amendment Sir.

DR. NAKYANZI (Ntenjeru South County): Thank you very much Mr. Chairman. I would like to support the first Clause of this Amendment about informing the family and the lawyer of the person arrested having access. However, I am quite uneasy about the part (b) and (c) because as you know, some people even do not want the public or their relatives to know they were arrested. So, you may find that if you decide to announce on radio, you will be even offending the person who has been arrested. Secondly, the Government will also - if you put the onus on the Government to do the informing, it may be practically very difficult.

Now, concerning the medical treatment, why I am uneasy, first of all when you talk of independent medical treatment, what exactly does it mean? If you take it to mean that one should be entitled to a private doctor, then it means, those who cannot afford the private doctor, you are limiting them and who should be responsible for treating them? If you intend to include all forms of treatment, I can imagine a situation whereby an arrested person or for that matter, a Law-breaker has more rights than a Law abiding citizen. Because as you know now, very few people can afford full medical treatment. So, it may mean that somebody will be involved in committing petty crimes simply because he has a long standing ailment. May be he needs surgery which he cannot afford - let me do this to be put in prison - I claim a herniorrhaphy which is going to be done on me. So, Mr. Chairman, I am feeling quite uneasy about those two provisions and I would ask fellow Delegates to look at it more specifically. Thank you.

MR. TIRUSASIRA KATONGOLE DIFASI: Thank you, Mr. Chairman. I stand to support the Motion for the following reasons, Mr. Chairman. Before a person is arrested, there must be information leading to the arrest of that person.

AN. HON. DELEGATE: Point of Order. Mr. Chairman, in view of the fact that nearly everybody who has spoken has been supportive. Are we in order to go on until everybody speaks?

THE CHAIRMAN: I think the Chairman has some kind of judgement also. Please, go ahead.

MR. TIRUSASIRA KATONGOLE: Thank you very much, Mr. Chairman, for your wise ruling. Mr. Chairman, I was just saying that before a person is arrested, there must be information leading to the arrest of that person. Now, in my view, I am looking at the information taking to the prisoner in a wider context. If the Government can get the information which leads it to the arrest of that person, why can Government not use the same channel to inform the relatives of the people? In addition to that, the information I am looking at when I am in prison, is in fact wider. When I have been arrested, I should be accessible to information. For instance, to my Lawyer. If a Lawyer comes to me, I am going to give him information which he will use to defend me and in my view, that is my right. As if that is not enough Mr. Chairman, when I am arrested, I should not be denied to see my family because in the absence of my family, there are so many things which will go wrong. Therefore, Mr. Chairman, if I am given the chance to see and talk to my family, I can give them the guideline as to how they can manage the affairs when I am not there. So, in my view that is very important. So, accessibility to the family and the Lawyer is very important.

On the second point, Mr. chairman, every person in order not to abuse the human dignity, a person must be entitled to life. Now, if I have been arrested by Government, why cannot the same Government really look after me when I am in prison? In my view, I think the Government should foot the Bill of looking after me when I am in prison. On that point, Mr. Chairman, I would like to refer to Hon. Okanya who talked about the Article which appeared in *New Vision* recently. In fact we should not pretend about certain situations in Uganda. Many people in Uganda are being arrested and they are dying in prison because the situations in prisons are really very bad.

and if the situations in prisons are very bad, is it not the Government to blame? So, on that ground, I see no reason why Government cannot foot the Bill of looking after me

MR. MWESIGWA RUKUTANA MUGASHA: Mr. Chairman, I have a difficulty with this Amendment though I would want to support it. Fellow Delegates, I am calling upon all of us to be very careful with giving unqualified right to the suspect to access to the family and the Lawyer. Definitely I support that principle. But there is one fear - there are definitely deserving and genuine cases where the police has to detain this person for some time so that they can recover material evidence. There are cases where the suspect is likely to interfere with the investigations. To give an example, if somebody is detained on suspicion of theft, and the police think that the stolen goods are hidden somewhere, would it not be futile and dangerous for the hands of justice for you to say, let the family come and talk to him at this stage because he will definitely direct them how to hide the evidence. So, much as I support the principle, we must qualify it, we must give some time limit or we should take the principle of Article 71 which says, he can be accorded access within as soon as it is practicable. But if we are to say, to give unqualified right, then it may prejudice the interest of justice and thus the members of society. So, I would suggest - would move that the proposed Amendment 4 (a) be amended to read, the family and Lawyer of that person shall be allowed access to that person in reasonable time or soon as it is practicable. It is very dangerous Mr. Chairman and fellow Delegates, to give an unqualified right so that any time I come, I have a right to see the suspect even before the police does its work. Thank you very much, Mr. Chairman

THE CHAIRMAN: Now Hon. Delegates we have debated this particular Amendment in detail, but what is emerging is that the principle is acceptable to those who have actually spoken. I do not think I have heard any one object really to the contents. Now, the point though is, although the majority would go in favour of the proposed Amendment, there is a question of not being easy with wording of some of these provisions. Doctors of medicine have said so, Lawyers have said so in respect of others and so on and so forth. I would have liked to hear from Members of the Legal and Drafting Committee whether they are happy with the wording

MR. ELLY KARUHANGA: We definitely are not happy with where the Amendments want to be placed. We think they should not be in 53 (iv). If there are any Amendments to go for medical attention and access to Lawyers and members of the family, we would like to have that reflected in 53 (ii). However the actual wording and placement, I propose, really be referred to the Legal Committee. I propose that the medical attention is a very good idea, access to a Lawyer, a very good idea, next-of-kin, members of family a very good idea. But all these good ideas are not properly reflected in the way they are proposed by Hon. Wasswa Lule and his Friends. So, I would like to propose to you, Sir, that you refer this matter to the Legal and Drafting Committee so that we can consult our experts as well and then come with what we consider to be a proper Amendment. Thank you.

THE CHAIRMAN: I would like to suggest that the Legal and Drafting Committee have a look at this in view of the fears which are widespread on the Floor. We are writing a Constitutional Provision and we should be quite clear as to what we are trying to put in this Book. I would suggest also that Hon. Wasswa Lule of course the Mover and Hon. Kirenga would be there. But the other Members who have indicated intentions to also give some ideas

We have got two more Amendments on this Article. One by Hon. Omara Atubo and another one by a number of Members, Hon. Odur being the leader of the consortium. I would suggest that we have quite a bit of work on this, but what we need is to have some work to go to tomorrow when we finish this. So, I would like to suggest that given this after 2.00 p.m. we adjourn to allow Members of the Legal and Drafting Committee to go and have lunch together with Members who have sponsored 54 to 59 so that they meet them in addition to the Committee's work in relation to the two Articles we have referred to so that tomorrow morning, we deal with 51 (i) and then proceed to do the two remaining Amendments and then by that time we hope that the Legal and Drafting Committee will also have produced some work in relation to 54 up to 59, then we can proceed logically without having to break again.

LTCOL. KIIZA-BESIGYE: Point of Procedure. Thank you Mr. Chairman. I would like that, in light of what we have seen concerning these Amendments, may be we adjust our procedure such that when an Amendment has been presented through the

Legal and Drafting Committee as we agreed, before we begin speaking on it after the Mover has, may be moved it, an opportunity be given to the Legal and Drafting Committee to also sum up the reasons and various aspects of the Debate that may have transpired in the Committee so that this gives a background to the whole House about the various views that came and were, may be, dismissed and so on. I think this would help the House a little faster and also to be sufficiently informed not to repeat what would have otherwise been discussed.

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