



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

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TUESDAY, 6TH SEPTEMBER 1994

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Tuesday 6th September 1994.

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

P R A Y E R S

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

The Assembly was called to order

COMMUNICATION FROM THE CHAIR

THE CHAIRMAN: Hon. Delegates, again we must apologise for the delay in starting but it arises from the fact that the committee sat until very late, and they had to prepare the report and also the drafts for us to consider this afternoon. I would, therefore, suggest that we proceed to the business and handle the drafts as proposed by the Legal and Drafting Committee.

Prof. Kanyeihamba: Thank you, Mr. Chairman. I would like, with your permission, to give two brief reports on the work so far done by the Legal and Drafting Committee. The first short one relates to the work done on articles 54 to 59. Yesterday, Mr. Chairman, the Legal and Drafting Committee met with delegates seeking to move various amendments to article 54 to 59. There were altogether over 80 amendments. The committee slashed out these with the Movers explaining what the committee thinks should be included in the constitution particularly with regard to detailed Clauses. Movers of similar amendments were encouraged to merge the amendments and sponsor them jointly. As result, Mr. Chairman, several Movers agreed to sponsor amendments jointly, while others withdrew those that were already covered by the draft. As before, where the delegates, and I think we had one who insisted that he would move his amendment, the committee did not interfere with the right of the delegates to do so. As a result, Mr. Chairman, the committee produced 9 proposed amendments to be considered by the Assembly. These amendments are being put on the Order Paper and relate to articles, 54 to 59. These are in addition to three amendments to be Moved on article 53 up on consideration which was referred to the committee by the Assembly. The committee further recommends that we should defer articles 57(3) and 59 (3), pending final decision on a new article to replace article 51 sub-clause (2)

Now, Mr. Chairman, to the second report, it will be recalled that the Assembly referred to the committee the amendment proposed by honourables Wasswa Lule and Kirenga, concerning persons arrested, restricted or detained, a right for their families or next of kin, lawyers and doctors to be informed and to have access to the person detained; and also the right of the detainee to independent medical treatment. This proposal was to be considered also in relation to clause (1) of article 53, and the question, what detailed the exceptions were to be in the constitution with requirements of article 53(1), that no person shall be deprived of his or her personal liberty. After thorough discussion, it was agreed that amendments be moved as follows:

(a) That Clause (1) of article 53, be replaced with a new article which incorporates the exception contained in article 19 of the 1962 Uganda Constitution.

(b) That an amendment be moved inserting a new clause after clause (3) stating the right of a restricted or detained person at his or her request to have his or her next of kin, lawyer and a personal doctor informed; and for these persons to be given access to the detained person and for the detained person to have right of access to private medical treatment at his or her own cost.

(c) For an amendment to be moved to replace the existing article 53 (5), with a new clause entitling a person deprived of liberty not to be affected by the law of limitation of actions during the period when he or she is deprived of liberty, and also during any period when he or she is unable to bring proceedings or compensation against the wrong doer as the result of the privileged status or position of the wrong doer.

Mr. Chairman, delegates will notice that some of these amendments are obviously going to put extra clauses on the present draft, but it was decided by the Legal and Drafting Committee with Movers of the amendments, that it is preferable, particularly on the chapter on human rights and the fundamental freedoms, that we should not leave any stone unturned. It is very, very important that we should be precise and more detailed than just leave things in a vague manner. It is for this principle that I beg to Move, Mr. Chairman, I thank you, Sir.

THE CHAIRMAN: I thank the Chairman of the Legal and Drafting Committee and members of his

committee for the work they have done to simplify the matters in relation to the amendment of the various articles. I propose that we go on to consider the recommendations, but before I do that, can I get clarification from the chairman and his committee whether the three (3) amendments they recommend on 53 are exhaustive, or the other proposed amendments which appear on the original document, we have, will continue?

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. As far as article 53 is concerned, having discussed with various Movers of the amendments, we believe that what the Movers are going to do will be exhaustive on that article. And, Mr. Chairman, you will recall that this is an issue which had been thoroughly discussed by the Assembly in general terms. So, our view is that it is exhaustive Sir.

MR. KUTESA: Thank you, Mr. Chairman. In the previous report that we got from the Legal and Drafting Committee, there was a proposed amendment on 53 (7) regarding the right of habeas corpus. I do not see this one included here in this new report. And there was a fundamental, in my opinion, proposed amendment by Hon. Dick Odur which I personally feel was a strong and reasonable amendment, but I do not see it appearing here. So, when the chairman says, this new report is exhaustive, I do not know whether that is covered. Thank you, Mr. Chairman.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. Certainly the amendments to Clause 53(7), were considered and approved particularly in relation to the deletion of the words "Except and the following." I believe that the compilers of my report may have inadvertently left that out. But that was approved, Mr. Chairman.

THE CHAIRMAN: What about the one trying to insert in another clause relating to trial within 6 months which appears on page 5 under 15, of the original report by Hon. Omara Atubo.

PROF. KANYEIHAMBA: Mr. Chairman, it will be recalled that, that is one of the amendments which had been approved, previously, as a subject for discussion, and I believe that, at our last meeting, this was left undiscussed. But the committee had already discussed this with Movers so that it can be debated here in the present session, Sir.

THE CHAIRMAN: So, we have got the three (3) amendments that have come out of your yesterday's meeting plus the two (2) namely by Hon. Omara Atubo and then one by Hon. Odur as leader of a consortium of Movers

PROF. KANYEIHAMBA: Yes Sir.

THE CHAIRMAN: With that clarification, now we come to amendments which have been discussed between Movers and the Legal and Drafting Committee and which were extensively discussed here, except that we referred them to the committee with regard to 53 article clause (1). The question then was whether we should accept the amendment to detail the circumstances under which liberty may be deprived or may be curtailed and the recommendation from the committee is that we should accept to amend article 53(1) by setting out - I think it has been distributed. The amendment details a, b, c, d, e, f, g and h, as being circumstances under which personal liberty can be curtailed. Now, I do not think really we should embattle ourselves in further discussion on these matters. I would like to ask that the question be now moved so that I propose it and put it to vote.

AN HON. DELEGATE: Mr. Chairman, I fully support all these amendments, but I would be happy if the chairman of the Legal and Drafting Committee, Hon. Kanyeihamba could throw more light on the amendments dealing with the medical treatment included as a request and cost of that excess to private medical treatment?

THE CHAIRMAN: Hon. Member, we have not come to that.

AN HON. DELEGATE: I thought we were approving the whole report.

THE CHAIRMAN: No. Unless that is the wish of the House which will make it easier.

MR. MULENGA: Thank you, Mr. Chairman. I wish to call attention to a typing error. Mr. Chairman, as Hon. Delegates would come to the second page paragraph 8, instead of paragraphs (a) to (j) it should be (a) to (g) - that is (g) instead of (j)

THE CHAIRMAN: It is on page (2) of the draft amendment as proposed from the Legal and Drafting Committee, this is the draft that incorporates the proposed amendment by Hon. Joseph Mulenga.

Hon. Maliro and Hon. Kakungulu. You remember that there were these proposals on the Floor and they have been incorporated into this particular one after a lengthy debate as to which to choose and which one to leave.

MR. KUTESA: Thank you, Mr. Chairman. when I go through these proposed amendments, it seems to me that, they answer half the question. The question that was before us here was, in what circumstances someone can be arrested; but the other part which is more important is who can do so under the law. Who can arrest under the law? That part of the question does not seem to be addressed at all by all these proposed amendments. The worry of the House was that, stage agencies other than the police or other than authorised people do carry out these arrests and it seems to me that this question is not being addressed by any of these proposed amendments. They do indeed address the question of the circumstances under which these arrests can take place but they do not address the issue of who should be authorised to arrest. There was an argument on the right of a citizen to arrest and in certain instances where there is war, prisoners of war can be arrested and what have you. But, unless I am making a mistake, I thought the question was too fold.

MR. MULENGA: Point of clarification. Mr. Chairman, what Hon. Kutesa is talking about was discussed at length yesterday under an amendment proposed by Hon. Omara Atubo. He had suggested that we insert a clause to state explicitly that, no person shall be arrested except by someone authorised by law. But that was rejected and the House was contented with the first which says that, no person shall be deprived of personal liberty except as may be authorised by law. And "authorised by law" includes authorizing who shall do it. Mr. Chairman, this amendment is following that approved text. Thank you, Mr. Chairman.

Mr. Chairman, I beg to move that article 53 clause (1), be amended by (I would prefer, Mr. Chairman, to say by adding instead of deleting) adding to clause (1) the following, after the expression "authorised by law." In any of the following cases. Mr. Chairman, - shall I read it all?

THE CHAIRMAN: I think Members have the text?

MR. MULENGA: Perhaps, what I should state, Mr. Chairman, is that, we add the paragraph (a) up

to (h) as shown in the text, and the explanation as it was given yesterday, was that, this part is intended to indicate in what circumstances the Parliament may pass a law restricting the liberty of the individual. Mr. Chairman, the Movers have opted to use the text or the wording that was used in the two previous constitutions 1962 and 1967, but we have omitted certain paragraphs in the 1967 constitution which permitted Parliament to pass a law such as the Detention Act, and a law that would enable the state to exile someone or restrict someone as to where he may live in the country. Those two circumstances we feel are not desirable in the present day, or in the state of Uganda - the new state that Uganda wants to achieve.

Lastly, Mr. Chairman, in paragraph (h), we are trying to answer the point raised by Hon. Kakungulu, yesterday, when he said or raised the question as to the possibility of some circumstances requiring restricting or interfering with the liberty of the individual which is not covered by those listed in (a) up to (g). And so (h) reads, *'in any other circumstances similar to any of the cases specified in paragraph (a) to (g) of this clause'*. Mr. Chairman, I beg to move.

THE CHAIRMAN: I presume that this matter is seconded. Now I will propose the question that article 53 clause (1) be amended by adding the word "specified" in the Motion by Hon. Joseph Mulenga.

(Question put and agreed to.)

The next amendment is on article 53 by inserting a new article 4. This Motion is sponsored by Hon. Mathias Ngobi, Hon. Serwanga Lwanga, Hon. E. Kirenga, Hon. Wasswa Lule and Hon. E. Malinga. Now I take it that by order of arrangement Hon. Ngobi is going to present. He is not there but I can see Hon. Serwanga - okay the next of kin.

LT. COL. SERWANGA LWANGA: Mr. Chairman, I thank you. I think I may not present it because I am opposed to the whole thing. I think let Hon. Malinga or Hon. Kirenga present it.

THE CHAIRMAN: Are you withdrawing your sponsorship?

LT. COL. SERWANGA LWANGA: Accordingly, I think I have got strong views. I did not want it to be there at all, so I am withdrawing my sponsorship.

MR. KIRENGA: Mr Chairman, I beg to move that we insert a new clause after clause (3) of article 53 to be named clause (4) and to read as follows - in fact in (a) there should be a comma after the word personnel appearing in the second line thereof. So, the next of kin of that person, shall, at the request of that person, etc. be informed as soon as possible of the restriction or detention. So the rest is as appears in the text which everybody has. Mr. Chairman, this amendment covers the points raised yesterday by some Hon. Members. I beg to move that, that amendment be part of the Draft Constitution.

THE CHAIRMAN: Okay, that is seconded, no doubt. Now the proposition is that, we insert a new clause (4) in article 53 to read as set out in the amending sheets and the report of the Legal and Drafting Committee to provide that the next of kin of the person shall at the request of that person be informed as soon as possible of the restriction or detention. The next of kin, lawyer and personal Doctor of that person be allowed reasonable access to that person, and that, that person shall be allowed access to medical treatment. This matter was re-discussed at great length and it attracted consensus. It was the wording which was worrying some people. I think we have received a consensus that has come through. We should not begin opening a debate at great length on this one really.

DR. NAKYANZI: Thank you, Mr. Chairman. Although, I am one of those people who raised my uneasiness yesterday with the article. I think my problem has not been solved by the new amendment. First of all, when you look at clause (a), being informed as soon as practicable, it can easily be abused. What is practicable? I think it does not solve the problem of being abused by whoever is in charge, practicable can be a year, can be a month or can be a few days. Secondly, the other problem is that, I find the whole thing too lengthy. So, I would really ask maybe the Legal and Drafting Committee, whether there no possibility of maintaining the context in a shorter way. Thank you.

THE CHAIRMAN: That would be difficult.

AN HON. DELEGATE: Mr. Chairman, I am concerned that one of our would be co-sponsors Hqn. Serwanga Lwanga, has at the last minute withdrawn his sponsorship and in doing so, indicated that he expressed strong views of objection to what was being proposed. I suspect that his views may be

closer to mine. I entirely agree with the spirit of the amendment like all the other Members, but my concern has been as to the appropriateness of including all these within the constitution. Mr. Chairman, I am getting concerned that because of our history which is a history of abuse by government, abuse of authority, that now Members feel that we should use the constitution to do everything in our power to limit that abuse. I think that may make this constitution simply too long and in the end restrictive to the legislative arm of government that will be doing business subsequently. There are, I am aware, Mr. Chairman, already laws relating to the treatment of offenders and suspects. I believe that in subsequent Parliaments, there will be reasonable people - people who have suffered at the hands of government, like there are in this House. I do not see, Mr. Chairman, therefore, the need to bring all these concerns of possible abuses by government within the body of the constitution. Mr. Chairman, my clarification is whether my fears may be the fears of Hon. Serwanga in withdrawing his sponsorship, not that there is any opposition to the spirit or the content of the amendment but the appropriateness of its inclusion in the constitution. I thank you, Mr. Chairman.

LT. COL. SERWANGA LWANGA: I thank you, Mr. Chairman. Mr. Chairman, I properly and ably put my views on this issue in the committee. However, I think it was the minority in that committee, and the thing came back again, and here we are. But again to put my views to the plenary, Mr. Chairman, this law which we are trying to do as Hon. Besigye has clearly stated, it even appears like an elitist law. It assumes a lot of things, it assumes that the *Wanainchi* of Uganda, the peasants have got telephone, they have got radios, TVs, etc. That the state knows where everybody stays so that in case of somebody committing a crime they will just press the buttons and they will see that Serwanga Lwanga is on Nakasero Road Plot No.5 or Plot No.2 - which is not the case with our society. We are legislating for a peasant society, and now we are trying to put a law applicable to a modernized society - we shall take time to reach there. That is why I was saying that this thing should not be here, it should be in a subsidiary law made by Parliament. The spirit in which it is brought in is okay but I do not think it should be in the constitution. When you come to the practicability of this law, it will be very difficult even for the police, because the police will be busy trying to arrest other thieves and other criminals, but there you are pressurising the police that you must inform the

criminal's relatives. And we are thinking may be Members seated here since they will be the victims of this law, that is why they are trying to put it in. But if you are going to legislate for criminals, you must actually legislate for them properly. Mr. Chairman, this business of the police informing the relatives, may even jeopardise investigations.

Secondly, Mr. Chairman, on the issue of medical treatment, the medical treatment must be in Uganda. Suppose somebody says it is his right to have medical treatment, and he prefers to go outside Uganda and then he does not turn up.' So, Mr. Chairman, with those few reservations, I agree that the spirit in which this Motion is brought here is good, but it should not be in the constitution of Uganda. I thank you, Mr. Chairman.

MR. OMARA ATUBO: Thank you, Mr. Chairman. Mr. Chairman, I wholly support this proposed amendment as it clearly goes a long way to protect our fundamental freedoms and rights. But, Mr. Chairman, I am concerned with the use of the word in 4 (a) '*as soon as practicable*'. Mr. Chairman, I would like to draw to the attention of this House article 71 which deals with detention and restriction under the state of emergency. Under article 71, Mr. Chairman, there are very clear provisions dealing with similar situations because the restriction and detention we are talking of in 53 (4) are proposed under a normal situation. But under article 71, we are dealing with restriction and detention under a state of emergency. Even under a state of emergency, Mr. Chairman, if you look at 71(a), you are allowed within 24 hours to be informed of the reasons of your restriction or detention. But more importantly and relevant to this amendment is the fact that 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. So, Mr. Chairman, if under the state of emergency which to me is more even serious, if detention and restriction under a state of emergency a person can have all this right within 72 hours, but under restriction in normal situation, we are using vague and somehow meaningless words which we are leaving to the court to define '*as soon as practicable*'. Mr. Chairman, I think this does not go a long way to enrich our provisions on the question of human rights. So, I think the words '*as soon as practicable*' must somehow be limited to the definition of specific time i.e., 24 or 72 hours or something like that. Mr. Chairman, otherwise, I am in general agreement with the proposed amendment.

THE CHAIRMAN: But Hon. Omara Atubo, you must agree that you are anticipating debate on the other articles; we cannot use them to argue the case for the ones before.

MR. OMARA ATUBO: Mr. Chairman, I am only using it as an analogy. And to justify why I think that using the words next of kin, that person shall be informed as soon as practicable. What is the meaning of that?

MR. BIDANDI SSALI: Mr. Chairman, first of all I would like to disagree with Hon. Besigye and Hon. Serwanga Lwanga on the grounds that the arguments they have brought forward are the very arguments that were brought forward during the substantive debate on this. In the end the consensus went with the spirit which they agree with, and we sent it to the committee to put the drafts in the proper form. Definitely in the consensus there is always a minority just like it happened in the committee that he was in the minority. But that should not entitle that small minority to re-open the debate again when the consensus of exception was already agreed on.

As regards the question of being practicable or practicability, I, Mr. Chairman, tend to agree with Hon. Omara Atubo and request the Mover to add just one word; '*as reasonably practicable*'. I would like to add that because as a layman I assume that, the courts of law can pass a verdict on the reasonability of the period just like we provided it somewhere else. So, if we add the words '*reasonably practicable*' I think it takes care of the fact that the courts of law can say this is reasonable, this is not reasonable. Otherwise, I would like to support the amendment. Thank you.

MR. CHEBET MAIKUT: Mr. Chairman, I strongly support those amendments, and I only wish to express some disappointments about the remarks made by Hon. Serwanga Lwanga and Hon. Besigye. Now, my contention is that, in this dynamic society now, and in this civilized world, we should not be concerned nor we should not be talking about restricting the access to medical care, and the access to information. Because, Mr. Chairman, if you look at so many countries now, the right to information is one of the vital privileges that should be accorded to society and more so, to somebody who has been restricted, suspected or arrested or so. To me, I raise to support this amendment, and say that as to the worry of some Members who say that it is not

possible for government to inform the next of kin or the relatives of the affected person. I wish only to borrow a leaf from the works of the Uganda Red Cross, the Red Cross Movement in this country. In the Red Cross Movement we have got a department dealing with tracing, where if prisoners or somebody is put in jail or detained, and government has not been able to inform his or her relatives, the Red Cross Movement has been doing some work of tracing and carrying information to members of the affected family. So, to me, I would like to say that all those who have been detained or arrested, should have that privilege. Government should be obliged to send information. So, in summary, I wish to say that, in our world of civilization, Uganda should not be singled out as a country that denies information to be passed to affected relative. I support the amendment as moved.

PROF. NABUDERE: Mr. Chairman, I support the Motion. I just want to follow up the concern of the other Hon. Members who are concerned about 'as soon as practicable' and suggest a concrete period. Since the period required under a state of emergency is 72 hours, I would like to amend (a) to read as follows: "*the next of kin*" - in fact I should have preferred the wording "*spouse or the next of kin*". In fact it should be the spouse to be informed first. If there is no spouse then the next of kin can be informed. The spouse or the next of kin of that person shall, at the request of that person, be informed within 36 hours of the restriction or detention. Mr. Chairman, I say 36 hours because it is half of the period provided for under emergency regulations, and I think 36 is adequate.

MR. KATUREEBE: Thank you, Mr. Chairman. We did consider this question of having a time limit on a matter like this. Members should look at someone being arrested or detained in Kampala, and he lives in Kampala and his family may be reached within 36 hours or two days. Suppose someone from Otake county who works in Bundibugyo, commits an offence and is arrested in Bundibugyo - we are looking at the practicability in this country we live in, the country we are making a constitution for, a constitution that will come into forth may be in January or December; the practicability of saying you must inform his family in Otake county within two or three days. That is the basis why we thought, the word practicable takes care of how soon you may even get to know the whereabouts of that man's family. You may send a message through the police

to the village RC but by the time you trace the man's family or next of kin, seven days will have elapsed and you will have violated the constitution. I hope Members really see that we are making a constitution for a country we live in now, and the practicability of having such time limits. Thank you, Mr. Chairman.
(Applause)

THE CHAIRMAN: I think I should put the question on this one because the explanation has been given. I know there are concerns but we cannot cover all our concerns. Let us put the question. The question is that, a new clause (4) be inserted in article 53 in the terms set out in the report of the Legal and Drafting Committee.

(Question put and agreed to.)

THE CHAIRMAN: There is a further amendment to replace clause (5) of article 53 as set out in the report of the Legal and Drafting Committee. The sponsors are Hon. Kirenga and Hon. Moses Ali. I will call up on Hon. Kirenga to present this amendment.

MR. KIRENGA: Thank you very much, Mr. Chairman. The main change in this amendment as presented by the committee is about the law of limitation. Under our law, that is Act No. 20 of 69 miscellaneous position, if we were to sue the government for long detention, wrongful detention or any other wrong done to you, you have to give 60 days notice to the government.

LT. COL. KIIZA BESIGYE: Mr. Chairman, I take it that the amendment proposed on 63 (4) by Hon. Omara Atubo still stands, that is the case. Would it be in order to move to 5 before we -
(Interruption)

THE CHAIRMAN: In fact, I was coming - I did not want to interrupt Hon. Kirenga. I wanted him to finish then I apologize because there is already a proposal on article 4 which is now I think article 5 - because we have just passed 4 which displaces this one. And does Hon. Omara Atubo intend to push with the redrafting of 4? If you refer to the original report, not the one of today but the one which was before us, Hon. Kirenga you have to wait until we finish this one. Then you can come in with the amendment of 5 which is actually now 6. Hon. Omara Atubo if you proposed an amendment to clause (5) could you present it if you still insist.

MR. OMARA ATUBO: Mr. Chairman, are you going to allow the Legal and the Drafting Committee, as we agreed, to give the background on how they arrived at the compromise? Because there were so many proposals on that, but if they do not have, I can proceed.

DR. KANYEIHAMBA: Thank you, Mr. Chairman, the Deputy Chairman who chaired our committee when this amendment was passed is unfortunately is not here. He has gone for a burial. Nevertheless, I can give a general background to this particular amendment.

MR. KATUREEBE: Thank you, Mr. Chairman. The concern here was that, people get arrested, the trial takes so long and at the end of it, the case is withdrawn and they go - there is no remedy to them. So, the idea was to try and put a time-limit as to how long someone may spend in detention pending trial, and within what period of time the trial should be brought to an end. We decided that this comes here for debate because of divided opinion, especially, on (b).

THE CHAIRMAN: In other words, we do not have a particular report other than an impasse within the Legal and Drafting Committee. Hon. Delegates, Hon. Omara Atubo is moving a Motion, the Legal and Drafting Committee, reached a deadlock, and thought that this is a proper case for the plenary to pronounce itself on. In all fairness, let us first hear the Mover and if it is seconded, then we shall have a debate on the floor - a brief debate then we proceed to the other amendments.

MR. OMARA ATUBO: Mr. Chairman, the proposed amendment is in light of the phrase within a reasonable time. Mr. Chairman, Clause (4) article 53 says that where a person arrested, restricted or detained under clause (3) of this article is not tried within a reasonable time then it goes on. Mr. Chairman, as Hon. Katureebe has correctly pointed out, there are two proposed amendments to this. The first one is dealing with a bail situation - how long somebody can stay in prison. What is that reasonable time limit? But the second one which was more controversial than the first one is really dealing with the upper limit of trial - how long can somebody keep on going to court, and he is told his bail is extended, the police file is missing, and so and so on. That to me is the one Hon. Katureebe is referring to. My proposed amendment seeks to bring to this House to

decide whether to leave that vague word 'within the reasonable time' or because of the experience we have gone through to define what that reasonable time would be. And what I attempted to do, and many others did, was to put a limit during which period a person arrested should be tried and not simply within a reasonable time.

We tried to look at the interest of the society and the interest of the individual for example. In (a), which I think we are debating now, it reads as follows: *'where the person is not tried within 6 months, that person shall be released either immediately or up on reasonable time on such reasonable conditions necessary to ensure the appearance of that person at the trial'*. Mr. Chairman, under various regimes in this country and under various conditions, laws have been made by Parliament or by Decrees restricting the right of people to be released when they are imprisoned. At one time it was I think within one year - a person cannot be released. As of now, certain cases triable by the high Courts i.e. murder, treason and so on, one cannot be released on bail before something like 480 days. We have left this a grey area though fundamental what we call within a reasonable time, to be played about by regimes coming at various times and then it uses either Parliament or court to define what that reasonable time would be. So, I think it is now necessary at this stage when we are making a fundamental law from which all other laws flow to say that, it is not upon each regime to come and say that a reasonable time is these few months, these so many years. But at the same time we are taking care of the interest of society by saying that, if you are not tried within 6 months or you are not being acquitted or you are not being discharged but simply court is releasing you and at that stage the conditions can still be imposed by court to ensure that the person turns up for trial. I am greatly concerned, Mr. Chairman, that to leave that clause 'within a reasonable time,' undefined, vague, and to each Parliament and to every regime to come out with what in its own mind it thinks it should be, is not in the interest of freedom and human rights. Mr. Chairman, I beg to move.

MR. MAYANJA NKANGI: Mr. Chairman, I strongly support the Motion. We must not leave the fortunes of people arrested - after all this country's laws assumes a person to be innocent until proved otherwise - to their captors. I know of a case myself in which I was engaged, about ten years ago, in High Court. Someone had been arrested on suspicion of

murder, and after 16 months in prison there was no evidence and the man was discharged. Now how can we leave the courts or anyone at all, to define that this sort of liberty or this time is reasonable. In fact, I think we should really try and define the time during which a trial should take place. If there is no good reason for the court to go beyond that period then, of course, it can be stated to be quite clear. Because we know in this country it is possible those capturing people to keep them there and give all sort of excuses. That is why I am supporting Hon. Omara Atubo's Motion.

AN HON. DELEGATE: Point of clarification, sir. I am seeking clarification either from the Chair or from the Mover. We have two paragraphs as part of the same Motion, (a) and (b), but the two paragraphs represent different ideas. Are we debating them together, or we are now debating on (a), and then when we finish it we get to (b)? Because the two represent different Motions.

THE CHAIRMAN: Could you indicate how they are representing different Motions

AN HON. DELEGATE: In (a) Sir, you are talking of someone who has been arrested and has not been tried, and you are saying he must be tried within 6 months or else he be released on such conditions that will enable him to appear for trial. In (b) the trial may have started but you are saying it must be completed within 18 months and if it is not completed within 18 months, then that person must be discharged, and he will never be re-arrested on the same facts. And discharge, acquittal and trial are very different things. Sir

THE CHAIRMAN: Yes, that one is known to Lawyers but are they in the alternative or are they accumulative? Let us ask the Mover

MR. OMARA ATUBO: Mr. Chairman, I think I was cleared in reception of my remarks. I said the two are related but we can safely first debate one, pass it and then move to the other one. Because we could even amend, we could amend the amendments related. People might think we proposed 6 months, or 18 months are on the lower or on the higher side or they may allow the first amendment of 6 months, but they could still safely reject the (b) one because (b) is concerning Article 53 and very correctly put, the upper limit when trial has started. But (b) is dealing with when the trial should start and if it is not

started, the man should be released on bail with the necessary conditions as the court may decide. So the two are connected but they are separate. Mr. Chairman, I had already given my submission basically on (a) and not on (b).

THE CHAIRMAN: I think the problem arises from the drafting. (b) is purporting to make a reference to (a) because it is "where the trial of a person under paragraph (a)" and (a) is not in fact providing for the trial. (a) is saying that "where a trial has not started at the close of six months then you send the person home with or without conditions". So, the purported reference to (a) I think is misconceived in (b). Therefore, I was saying that there is need to synchronise the two. In other words, you are saying, you arrest someone, start trying him within six months or else you send him home. The other one is saying even if you have started but you have not finished within such a time regardless as when, (and you must have started anyway before six months) then you stop everything and discharge the person

MR. KUTESA (Mawogola County): I wanted, Mr. Chairman, to find out from the Mover of the Motion - you the Chair having pointed to him with respect to the poor drafting of this amendment - whether he would consider withdrawing this amendment and just amend the statement called "reasonable time" in the former paragraph (4) now (5) and call it six months so that we could move on more expeditiously.

THE CHAIRMAN: Hon. Omara atubo what do you say to that?

MR. OMARA ATUBO: Mr. Chairman, I am agreeable, thank you.

THE CHAIRMAN: The Motion had been moved and the position now is this, that we take what is (4), that the Motion as moved by Hon. Omara Atubo be dropped and instead the present clause (4) or (5) actually, be amended by inserting for the words "within a reasonable time" with the words "within six months". If we carry that then we debate. Is that correct?

MR. OMARA ATUBO: Yes, it is correct.

THE CHAIRMAN: Now, let us put that to the vote.

(Question put and agreed to.)

THE CHAIRMAN: Now what we have here is that a Motion on the Floor, in other words, the amendment having been carried, we now vote on article (5) so that we replace the words "reasonable time" with "six months."

MR. DAVID MWAKA (Nwoya county): I would like to support this amendment, Mr. Chairman, because it is important to be specific in all matters in this Constitution. I think this is similar to any amendment that we have just passed where we decided 'as soon as practicable' to just go. But, of course, the voice of the majority must prevail. I would like to say, Mr. Chairman, that in this particular one, we have got to be specific and I support this amendment of six months instead of leaving it vague as it is here. Because we have seen, Mr. Chairman, that in this country we have had a number of people who at one time or another found themselves under detention, restricted for many, many years. We have some examples of people here who were detained for more than five years without appearing in court. We would like this to be a thing of the past. We would now like to be very clear in our new constitution. We have had nasty experiences in this country, may be all of us assembled here at one time or another may find ourselves in that University College, Luzira, if we do not come up with a clear time period, we might find ourselves inconvenienced. So, I strongly support this amendment, Mr. Chairman.

DR. HIGIROSEMAJEGE (Lwemiyaga county): Thank you, Mr. Chairman. I support this amendment very strongly. Reasons have been given but I want to add another one. The government and the arresting authority should also be made accountable to Ugandans. They should know that when you are arrested, you are still innocent until it is proved that you are not and they should not simply arrest and forget you. Mr. Chairman, there are cases where a person is arrested by those who are so close to the arresting authorities and they only want to harass you and once you get into jail you are totally forgotten until nine, ten or eleven months when the arresting authority will tell the courts of law that you have no case to answer. Mr. Chairman, this has occurred to many people and it is a very serious matter that an innocent productive Ugandan should be arrested, put somewhere where he is nothing at all, he is just a mere number and nobody is accountable. So, Mr. Chairman, this is important that we give a limited time so that those who arrest know that this person cannot be there indefinitely to the whims of

those who want him to be away. So, Mr. Chairman, I support this amendment.

MR. NSUBUGA NSAMBU (Makindye Division West): Mr. Chairman, thank you very much. Experience has shown that this matter has turned into a business whereby a person who is competing with somebody else, alleges a capital offence against him, with a view of keeping him away from society and he rots there. We have these defilement cases. Sometime these cases are very difficult to prove and you find somebody kept in prison for so long and the case is not heard; he comes out when everything he was doing is disrupted. So while I agree with the changes, with the reduction of the period, I still maintain that the period of six months is too much. It should have been 90 days and normally draftsmen refer to days rather than months. So, this will also enable the police to work hard to see that people are not kept in prison for so long. The present period of 16 months is really terrible. If he is not completely released then he can be considered to be released on bail so that he can continue to report. So, you find, Mr. Chairman, that the period of six months is really too much - it is half a year. It should be 90 days only, and I am moving an amendment to that effect.

MR. WANDERA (Bukooli South): Thank you, Mr. Chairman. I am seeking clarification from the Mover. Where a situation arises, a person is arrested, he is taken to court today then the prosecutor says he is not ready to prosecute him and will be ready to prosecute him within two months. Would I get clarification on this: would this citizen, therefore, not fail to use this provision here to obtain bail immediately at that time rather than waiting for six months? My understanding of this whole thing is, in fact, that it restricts the provisions to bail when you go to court. What we are doing here now in my opinion is really to restrict it, to make it appear that you cannot get bail until after six months. I seek clarification, Sir.

MR. OWINY DOLLO (Agago County): Thank you, Mr. Chairman. Mr. Chairman, I notice two different types of releases as provided for in Criminal Procedure and lumped up here and, as a matter of fact, the proposed amendment by Hon. Omara Atubo complicates the matter. There is release on bail which is normally given either conditionally or unconditionally. Then there is discharge. I think this is what Hon. Omara Atubo was after - discharge because the state is not proceeding. I think Hon. Omara Atubo is saying if within six months nothing

is happening then an accused person should be discharged and that discharge cannot be on any condition. It can only be without prejudice to the state reinstating the charge as opposed to the 18 months period where that release would be final - *(Interjection)*- No. Its only to mention for the purpose of distinguishing, Mr. Chairman. I would propose that in order to avoid this complication and ambiguity, there will be need for the Legal and Drafting Committee to look at clause 5 again and may be, divide it up so that there is clear provision for release on bail and then a clear provision for discharge because nothing has happened in six months' period otherwise we will run into a lot of problems.

THE CHAIRMAN: I will hear from lawyers first on these matters because they involve - *(Interruption)* No, the concept is okay. I think may be one of the lawyers could educate the House on the meanings behind the words "release, discharge, acquit, etc." so that when we are discussing these provisions we know that the language we are talking about, it is not just that these words are loose, they have technical meaning and I would rather ask Hon. George Masika who must have got mixed up with these things for a long time to tell us.

MR. GEORGE MASIKA (Mbale Municipality): Thank you, Mr. Chairman. It is a pity that Hon. Omara Atubo threw away the amendment he had moved because it had separated the two situations where (a) the intention is to release a person on bail automatically when no proceedings are coming before the court and (b) was intended to discharge a person who has not been tried after a long period of detention. So, these are the two situations. One for bail; two for actual discharge, releasing the person because you cannot try him within a reasonable time. Now, we have gone back to a situation where we are handling a draft combining the two and merely giving the opportunity of an arrested person being released after a reasonable time. That does not split the two situations of bail or of being completely and freely discharged never to come back again to court. So, if the Hon. Delegates would like to split it, we may have to either refer it to the Legal and Drafting Committee to see the two situations if we desire so or go back to Hon. Omara Atubo's division and make a provision one-for bail and another for actual discharge. That is my view, Mr. Chairman.

MR. MULENGA (Democratic Party): Mr. Chairman, I agree with Hon. Masika but I wish to add that

in fact there is a third situation. Clause (3) as we have passed it, it provides for someone being arrested and being detained without being released. So, when we come to clause 4 it says "Where a person arrested, restricted or detained under clause (3) of this article is not tried" This one jumps the other stage of "is not released" because when you take him to court and he is charged under clause (3), there is no mention here that he ought to be released or he has a right to bail, or that he can apply for bail. It is dealing with the only situation where he has been detained for six months whereas the wording as it is now could be read to cover both, reasonable time, meaning he is released early or released because the state has delayed. So I am inclined, Mr. Chairman, to suggest that to be clear the three situations ought to be catered for. Bail on application using the discretion of the court immediately on being charged. But where the court has not granted bail you give a period within which it may reconsider. Here six months is being suggested, then you provide the third stage where the prosecution or the state has failed completely or has neglected to prosecute and you say in those circumstances the fellow should be discharged until the state makes up its mind or is capable of prosecuting. So, there is the initial stage where in simple cases the Constitution should encourage bail being granted as the main thing. But where in the discretion of the court or for fear that the man may not answer or because the prosecution fears he may interfere with the investigations, the court is obliged to remand him, then reasonable time, like six months suggested should be safe within which all those fears should be overcome.

Then, the third stage where the state is failing to prosecute. So it may well be, Mr. Chairman, worthwhile to again refer this to the Legal and Drafting Committee to restructure.

THE CHAIRMAN: Thank you. In fact, I am personally surprised that the whole of article 53 does not talk about the right to bail as a separate right in protecting the individual. In the Constitutions that I have read from time to time there is a provision for the right to bail at all times unless you set out restrictions because of the nature of the crime. But it is not brought out here and what I fear is that someone could argue that it was deliberate when in fact it may have been an oversight in the preparation of that section.

MISS KALIKWANI (Women Delegate - Kamuli): Thank you, Mr. Chairman. I think the problem with this new article (5) is that some of these words are lacking but I was just sharing with a neighbour saying that they are actually implied in this article because I have read it very carefully and compared it to Hon. Omara Atubo's recommended amendments. Now, I find that these words are all implied because without prejudice to any further proceedings that may be brought against him, I think we are releasing that person but he will be brought back to court. I understand that he has been released but, may be, somehow on bail and then later on he says "including in particular conditions reasonably necessary to ensure that that person or that he appears at a later date. The bail is implied. So, what I want to recommend is that may be our Legal and Drafting Committee looks at this clause again and makes sure that these words are there instead of these vague phrases and clauses.

CAPT. BABU (Kampala Central Division): Mr. Chairman, I propose that we have a caucus of lawyers and then they go and discuss this and come back and brief us because we are now being left and it is not fair really. Because this has been turned into Law Development Centre and it is a legal laboratory.

THE CHAIRMAN: I do not think we should go that far. The Chairman deliberately steered the debate and it has helped because I think we do agree that the provision, even in the present draft, is inadequate particularly on the question of bail and such other things. We cannot do it here. So, I would like to suggest that we refer this back to the Legal and Drafting Committee and then we handle the other two amendments and wait to hear from the Committee.

MR. RUZINDANA (Ruhama County): Mr. Chairman, I wanted to seek clarification about this six months with reference to the current law giving 240 days for small crimes and 480 for capital crimes. Now, does this six months replace both of those and if it does, should we not still make a distinction between capital offences and the minor ones and then we stipulate a smaller, a shorter time for smaller crimes and may be limit that six months to capital offences? I would like to be clarified on whether these six months replace both periods and if it does whether we do not need to give two periods for smaller offences and for capital offences. Thank you, Mr. Chairman.

THE CHAIRMAN: If the amendment to be carried provides for six months, the six months would be the upper limit and Parliament can pass laws but not exceeding six but they can, for smaller offences, send the person home within three months. They would not be conflicting with the constitution but could be subject to the upper limit and if the constitution comes into force, of course, then those provisions that are inconsistent with it in relation to those matters would automatically fall. But that does not prevent Parliament drawing a distinction in terms of the nature of the crime and then using the six months as the upper limit for the serious ones and then bringing down the smaller ones to some other period which would be less than six months. In other words, it would have the effect of mocking those particular provisions. I would like to suggest at this juncture that we refer this to the Legal and Drafting Committee. As you can see really there is not much to discuss. Can I suggest that people who have got concern can go and discuss this with the Legal and Drafting Committee so that all these can be discussed and brought back in a new formulation taking into account the right to bail and such other rights which seem not to be covered here.

Now, I will call on Hon. Kirenga to move the amendment on what has now become (6).

MR. KIRENGA (Mityana North): The new Article 6 was originally Article 5 and it provided for a victim of wrongful arrest and false imprisonment to be given compensation after his release from custody. Now, we are saying that his right to claim compensation for wrongful arrest and false imprisonment should not be affected by the period he is in detention for the purpose of the law of limitation. We are also providing for a situation of Hon. Moses Ali where somebody who detains another is untouchable so that he cannot be sued for false imprisonment or wrongful arrest or any other wrong because of that status. So, we think of a situation where that prejudiced status ceases upon the change of government or change of circumstance then the victim should be able to sue when he is no longer fearing. He should be able to sue that person so that he is not even affected by that period when that umbrella of privileged status was protecting him. Under the present law, that is the law of limitation of action against the government and the parastatals and local governments the period of limitation is one year from the date when the cause of action arises. That is to say, if someone for instance is arrested and put in prison,

he must sue within a year from the date when he was imprisoned and then before suing he must have given 60 days notice to the government. So, he must give 60 days notice. After the expiration of 60 days then he must file an action. So, you can find a situation like I witnessed when the Hon. Rubaale who was a Minister of Public Service was arrested during Obote II regime. When he came back, it was almost after two years and it was said that, that period which was outside the one year was not covered, so he could not get damages for that period when he was unable to sue because he was time barred. Now, we are saying that in this amendment that time should be reckoned from the time of release from custody, get with a statute called the Statute of Limitation. *(Interruption)*

MR. KAWANGA: Get with a Statute of Limitation which is passed by Parliament. The very Statute he is talking about which is called the One Year Limitation is also a statute which was created by Parliament. If it is causing any injustice the best solution is to go and amend that statute in Parliament when Parliament sees it fit. There is no reason why we should clog our constitution with a thing which can be handled much better in Parliament rather than here. I oppose the amendment.

MR. WANENDEYA: Thank you very much, Mr. Chairman. Mr. Chairman, much as I agree with Hon. Kawanga, there is need to get this part of the amendment into our constitution. Mr. Chairman, the constitution when it is finally published it should be translated into a number of languages so that our people would know what is in the constitution. On the other hand, they won't open other subsidiary laws which are not part of the constitution because we have got to get campaign to get the constitution taught to our people far and wide. The only part which I have which I disagree with is not to have included what I would call intimidation. Mr. Chairman, even if some people would say we should not get intimidation into our constitution but under article 286 we can include intimidation. Mr. Chairman, there are a number of Ugandans who left this country of ours because they had been intimidated by government operatives and, therefore, if it is defined and included in article 286 Mr. Chairman, we should support this amendment.

THE CHAIRMAN: Hon. Member we are debating this one here; we are not yet on that other Article. Can you confine your remarks to this one

MR. WANENDEYA: Mr. Chairman, what I am saying is that this clause should be included and I will be bringing an amendment to what is already on the Floor. I thank you, Mr. Chairman.

MR. MASALU MUSENE (Manjia county): Mr. Chairman, we are making a constitution which should be practical and which should take into account the practical realities of our country. Now, Mr. Chairman, if we do not put a limitation to some of these cases against the government or the institutions then we are going to have a case, a situation where people will come up with old cases that they were allegedly detained thirty years ago, twenty years ago and so forth. So, we are going to have a situation where we shall have so many cases, endless cases against the government and given the poor background of our country, I am sure such a law will serve no purpose.

Secondly, Mr. Chairman, the Mover of this Motion, *(Interjection)*- sorry, Hon. Kirenga has completely misled this House as far as the Limitation Act is concerned especially when he specifically talks about detention. He said that a person detained will not therefore have time to sue the government because he has spent most of the time in detention. Mr. Chairman, the Limitation Act is very clear and it clearly states that the time to limitation starts to run when someone has been released from detention. So, it does not start to run when he is still in detention. Therefore, he has misled the House as far as the limitation period is concerned with cases of people who are under detention. Therefore, Mr. Chairman, I join the others in strongly opposing this amendment as being frivolous and uncalled for. Thank you, Mr. Chairman.

THE CHAIRMAN: I think the word "*frivolous*" is a bit strong but anyway, Hon. Ssebaana Kizito.

MR. SSEBAANA KIZITO (Makindye East): Thank you very much, Mr. Chairman I am seeking clarification because I am getting confused as to what to put in the constitution and as to what to put elsewhere outside this constitution. Because many lawyers have been arguing that this provision has got its home - its proper home should not be in the constitution but it should be somewhere else. But at the same time we have been passing a lot of clauses here which are more particular than general. For example we did pass sometime ago a clause talking about 48 hours rather than 72 and I am sure in this

particular article 53 a lot of clause in here should be specifically mentioned in the law somewhere passed by Parliament and not in the constitution. Therefore, I would like to seek your indulgence, as to where the constitution starts and normal parliamentary work starts. Thank you, Mr. Chairman.

THE CHAIRMAN: Okay, I think that is important but it is not a lesson that we can embark on now. I think what we shall do is as we go along experience will reveal itself in various fields. Hon. Kitariko, and then we should, I think, begin pronouncing ourselves on this.

MR. KITARIKO (Democratic Party): Thank you, Mr. Chairman. I hear, to my disappointment, of lawyers and Members of Parliament saying this is in our Statute books. It is catered for there but we all know that Parliaments in this country have been accomplices to the dictatorship and there are obnoxious laws in our statute books which should have been removed by parliament. So, when is parliament moving to remove those laws? So, I agree with Hon. Kirenga that if the Law of Limitation has not been amended for a long time, it should be amended and I think, be in the constitution. Thank you, Mr. Chairman.

MR. KIRENGA: Thank you very much, Mr. Chairman. I wish to clarify to Members that what I am talking about is the Law of Limitation of actions against the government. That is Act No. 20 of 1969. I have been personally dealing with this Act for so many years, more than thirty years, Mr. Chairman. It was passed in 1969 to limit actions brought against the government *-(Interruption)*

THE CHAIRMAN: But you do agree that (6) as it is, is beyond just the government?

MR. KIRENGA: Well, of course those untouchable were the words of Hon. Moses Ali. I accommodated him but my main contention, Mr. Chairman, is with the government. That Act says that the time starts running from the time the cause of action arises and the cause of action arises in the case of false imprisonment from the time when you are imprisoned not from the time when you are released. I am surprised that a magistrate, Hon. Musene, does not know this. The Act is very clear, I have dealt with many cases and I have dealt with a case where somebody, that is Hon. Rubaale - that case came before the courts *-(Interruption)*

THE CHAIRMAN: But Hon. Kawere also says he got compensation.

MR. KIRENGA: I think that was ex-gratia.

THE CHAIRMAN: Was it ex-gratia, Hon. Kawere?

MR. KAWERE: It was not ex-gratia.

MR. KIRENGA: Mr. Chairman, usually when you are settling cases it can be taken into account because of compassion. Otherwise, the law is very clear. It says that the time starts to run from the time when the cause of action arises. And then there was another point brought again by Hon. Musene that if this amendment is passed, people who were detained thirty years ago will be able to bring actions. That cannot be the case because what I am saying is that the time of one year should start running from the time when you are released. So, if that one year elapses, then you are time barred. So, if somebody was released thirty years ago the time is already passed but if he was released yesterday he should start counting from yesterday the one year period. That is what I am saying. I do not want people to lose their claims because of being detained unnecessarily. *-(Interjection)-* The law of course does not operate retrospectively. I am reminded.

Another thing, Mr. Chairman, which I want to say is that although there are some statutes governing Limitation, this should be subject to the constitution. We are making the fundamental law of the land, so if we limit limitation in this statute then the statute will have to be changed because that extent will be unconstitutional. It will have to be changed because that extent will be unconstitutional, so that the time of limitation runs - that shows disability - so that detention is regarded as disability for the purposes of the law.

That is all, Mr. Chairman, I beg to move.

THE CHAIRMAN: Hon. Moses Ali you want to add something particularly new again?

BRIG. MOSES ALI: Thank you, Mr. Chairman. I co-sponsored the amendment. My idea was specifically to deter those people who found themselves in the position of power that they had no recourse to use of that power, to use it as they wanted. And experience has shown that in every government, in and out, that they are above the law; the government

in which they live in does not touch them until that government goes. Many people have suffered in their hands. If we put this article in place, definitely, those people will have to think twice. It is a deterrent. The lawyers among us, of whom I am proud, should help us who are not lawyers to understand and take a proper decision but not to take advantage of people who are not lawyers and confuse them with -
(*Interruption*)

THE CHAIRMAN: No, please do not impute improper motives to the interventions by various Members who happen to be lawyers.

BRIG. MOSES ALI: Sorry, Mr. Chairman, I know you are a lawyer but - (*Interruption*)

THE CHAIRMAN: I am not practicing law here. I am chairing a meeting.

BRIG. MOSES ALI: Okay, Mr. Chairman, I do not like to enter into a dialogue with you but what I am sincerely saying is that we would need some guidance from our brothers. Many of us are not aware of existing laws but through experience each person or the people of Uganda have gone through governments since Independence. So, whatever articles or clauses that are being proposed here are with the intention of curbing some of the excesses that have already taken place so that in future those similar people should not abuse the power that they are entrusted with. So, Mr. Chairman, I think definitely I am not going to say that those people who are opposing this article are the promoters of those excesses but I am saying that we should not underrate this amendment. It is very important, it will save many Ugandans from hands of some few who are abusing the law, those whom I called yesterday the "untouchable". They are there; you can not do anything. Their mentors will also begin to fear them, so they grow horns until the government goes. Thereby, people are maimed. Some people begin to lose their jobs and many things. Mr. Chairman, have happened. So, I call upon my Colleagues to understand and agree with this amendment. Thank you.

THE CHAIRMAN: Hon. Delegates, we have got an amendment on the Floor essentially it is that clause (6) previously clause (5) should be deleted, which read that "A person who is unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from

that other person or authority whether it is the State or an agency of the State or other person or authority." That this be deleted and in its stead be inserted the expanded provision as you see it in the report of the Legal and Drafting Committee. But in a nutshell to provide that the time of limitation does not apply to the cause of action available to the person detained until after he has been released and that it should run against not only the institutions enumerated there but people who Hon. Moses Ali refers to as "untouchable" although the word is not specifically applied in the constitution. Now, after these clarifications and observations we have reached a stage when we should pronounce ourselves on this. In other words the choice is between leaving the provision as it is or lifting it out and inserting the one that appears in the report of the Legal and Drafting Committee. So, now I put the question.

(*Question put and negatived.*)

THE CHAIRMAN: Hon. Delegates, there is another. If you go back to the original report there is another amendment proposed to Article (7) and this is by Hon. Odur, Hon. Musekura, Hon. Elly Karuhanga and Hon. Wasswa Lule. I presume Hon. Odur is going to read the amendment. It is an amendment to clause (7) of 53.

MR. ODUR (Dokolo County): Mr. Chairman, I beg leave of you to move an amendment to article 53 clause (8) (it was clause 7 before) on page 20 as follows: Delete the following words "except in the case of a state of emergency as provided by this constitution". The new clause (8) should now read as follows: "The right to an order of habeas corpus, that is, the right to an order requiring a person to be brought before a judge or court to investigate the lawfulness of restraining or the detention of a person shall be inviolable, and shall not be suspended." Mr Chairman, I beg to move.

THE CHAIRMAN: Is that seconded and any debate? I can see the fate is already determined. Now let me put the question.

(*Question put and agreed to*)

THE CHAIRMAN: Hon. Delegates, we would have completed Article 53 but for the fact that we have referred to the Legal and Drafting committee the new clause (5) and that they come to us after they are ready. I presume tomorrow may be the

Chairman could tell us whether they are meeting today. The Chairman of the Legal and Drafting Committee.

PROF. KANYEIHAMBA: Mr Chairman, I think we should report on Thursday morning.

THE CHAIRMAN: You see, we would have wanted to finish that article tomorrow then go logically. Don't you think you can have a short meeting?

PROF. KANYEIHAMBA: Okay, Mr. Chairman. With your persuasion may I call upon the members of the Legal and Drafting Committee to meet immediately after here and, Sir, we propose including those lawyers who have got very strong views about this, who can come and assist us on this matter, I suggest.

MR. KARUHANGA: Especially, the Attorney General.

THE CHAIRMAN: The Chairman of Legal and Drafting Committee did report that the committee has carried out work on Articles 54 to 59. And so when we resume tomorrow and if the Committee has completed its work on the reference we have just made, then we shall wind up on article 53 and then proceed on the amendment as will be made available to us by the Legal and Drafting Committee.

MR. KARUHANGA: Mr Chairman, I do not want to contradict my chairman but there is a problem which I would rather we reported on Thursday on this issue. I know fully well the urgency of the matter but the reasons behind this are as follows: One, the government, in fact the Attorney General has already presented some amendments to NRC about bail, wanting to abolish some aspects of bail. We would have wanted a presentation and an input from his office in our Committee. Secondly, Mr. Chairman, there has been a Commission of Inquiry looking into this very aspect and it has published its report and the findings of that Commission are already available, also with the Attorney General, on this very specific subject. It would have been good for us also to have all our members present because a good number of them are away and they will be available tomorrow. So, I was suggesting that we should be given at least today so that we can present on Thursday. But if you want to push it without this input, it is up to you. Thank you.

THE CHAIRMAN: Hon. Delegates, I do not think we should debate this one. What the members of the Drafting and Legal Committee are saying is that there is some material which you may want to have recourse to. Now anything that enriches our presentation here should not be left out. As long as we are clear enough on what we want, we can either accept or reject but we should not be shutting away any possible enrichment. Since our work on 54 is not tied on 53, I intend now to agree that we give them time. We can go ahead with 54 tomorrow and we have enough work until the end of the day. I think that should be fine.

There is the Business Committee and the members know themselves. The chairman of that sub committee would like to remind members that the meeting is arranged for 3.00 p.m. this afternoon. I presume you know where to meet and, therefore, we do not have to go into those details. Hon Wanendeya you seem to say something about our adjournment?

MR. WANENDEYA: Thank you, Mr. Chairman. Just before our adjournment - and I am sorry about this, Mr. Chairman, in that I do not want to keep members here but - our Governments have been losing a lot of money due to mismanagement of cases by our public officials. Mr. Chairman, I am not satisfied with the amendment on 53 (5) and I distributed the proposed amendment to you. So, with your permission - *(Interruption)*

THE CHAIRMAN: Hon. Wanendeya, when a matter has been discussed and we have voted on it - if we were all to re-open our subjects then this constitution will be available for debate forwards and backwards. We have made a decision, not all of us can be happy with it and I think matters end there. That is the process of democracy. If you want to come back at the reconsideration stage in accordance with the Rules of Procedure there is no problem.

MR. WANENDEYA: Okay, Mr. Chairman, I will submit to that because I do not want to keep members here but I thought I better mention it. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, we adjourn and resume tomorrow at 8.30 a.m. The Assembly is adjourned, thank you.

(The Assembly rose and adjourned until Wednesday, the 7th of September at 8.30 p.m.)