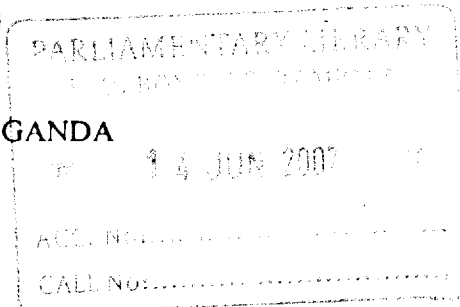




THE REPUBLIC OF UGANDA



PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

FRIDAY, 9TH SEPTEMBER 1994

MOTION -
 Consideration of the Draft Constitution of the Republic of Uganda **[Pg 1994]**

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Friday, 9th September, 1994

(The Assembly met at 9.30 a.m. at Kampala International Conference Centre).

P R A Y E R S

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

The Assembly was called to order

REPORT FROM THE LEGAL AND DRAFTING COMMITTEE.

MR. BEN WACHA: Mr. Chairman, we do not have any specific report to make to the Assembly. May be we will make comments during the various amendments which are to be moved this morning.

THE CHAIRMAN: Could we, if you do not mind reminding Members, I do not think it does any harm to indicate - yesterday we disposed of Article 60, didn't we? And so we have these amendments which are before us. I think it would be good if the Chairman of the Legal or his Deputy could remind Members because there were those which were brought outside the arrangements as we know them so that we know clearly how we are proceeding.

MR. BEN WACHA: Thank you, Mr. Chairman. Yesterday we stopped at Article 60 (5). We effectively handled the Protection of the family. I do not think there is any other amendment which was brought to my attention dealing with that and I think, therefore, that Article is adequately handled. So today we should start with Article 61. I have been informed by Hon. Byanyima that she wants to bring in a new clause in Article 61 to deal with affirmative action in respect to all groups. Is that true?

BYANYIMA: Yes, Sir.

THE CHAIRMAN: Is it this one which appears on the circulated sheet?

MR. BEN WACHA: This one appears on page 6 under the names Winnie Byanyima, Hon. Mazima, Rhoda Kalema, Chebet Maikut and Dr. Kiyonga. That was my understanding.

THE CHAIRMAN: I think we are all together. There is a circulated sheet showing page 6 and it runs

up to page 9 with proposed amendments to various Clauses under various Articles. We are now starting with a proposition to insert a new Article 61. What I do not understand is whether it is intended to replace 61 as it is or then we come to 61 separately.

MISS BYANYIMA (Mbarara Municipality): Thank you, Mr. Chairman. The new article is not meant to replace Article 61. It is a new Article 61 so that 61 becomes 62. It is meant to cover various disadvantaged groups because we see that 61 deals with women, 62 with children, 63 with the handicapped and this particular Article we are introducing covers all of those disadvantaged groups. So we thought we should introduce it first to cover all those groups we are going to come to specifically. So we were introducing it there as a new Article 61 so that the Draft 61 becomes 62. Thank you, Mr. Chairman.

THE CHAIRMAN: Okay, could you present your proposed amendment or insertion?

MISS BYANYIMA (Mbarara Municipality): Thank you, Mr. Chairman. I have the pleasure to introduce this amendment that is introducing a new Article 61 which reads as follows: (1) *"The state shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition and custom, for the purpose of redressing imbalances which exist against them."* Should I continue to the next clauses?

THE CHAIRMAN: Well, I think the point is that you want to make a presentation and we take it that this is seconded and then you can speak to it. Is it seconded? Now you can speak to all the Clauses then we shall go one by one. If they are related, I think you should present all of them and then we shall discuss them one by one.

MISS BYANYIMA: Thank you, Mr. Chairman. Clause (2) reads: *"Parliament shall make relevant laws for the purpose of giving full effect to clause (1) of this Article."* And clause (3) reads: *"For the purposes of this Article, Parliament shall establish a Commission to be called the Equal Opportunities Commission, charged with the supervision of the implementation of any measures prescribed by Parliament for the purposes of giving effect to this Article and in particular with advising*

Parliament on proposed legislation affecting the marginalised groups.

Mr. Chairman, the reason we are moving this Article, first of all is that we believe that statements of equality are not enough to achieve equality. In other parts of the Constitution, we have made statements of equality asserting the principle of equality. However knowing that there exists inequalities in our society, inequalities that arise from discrimination on the basis of gender, age, disability and other reasons, we feel that it is necessary as even elsewhere in other countries, it has been found necessary to state the right of affirmative action for those that are discriminated against. So we think that empowerment of the disadvantaged groups to achieve equality is part of the mandate of this Assembly.

The Article itself seeks the right of affirmative action for various groups. When we say marginalised on the basis of gender, here we mean women and girls. We are talking about our history, our cultures that have discriminated against a girl child and the woman. On age, again we are talking about discrimination to people on the basis of their age, they could be the youth, they could be the aged, they could be the very young. Disability, that is self-explanatory. Other reasons created by history, here this could include minorities who for reasons of our history have been discriminated against. It could be our colonial history, it could even be our Independence history, groups that have been discriminated against. The Clause is also open for the future so that even other groups that could become disadvantaged in future could seek redress through this Article by invoking this particular clause.

Then we go further, in Clause (2), what we are trying to achieve there is to provide for an environment or to enable Parliament to make laws that again will address these particular groups - sectoral laws affecting these particular groups. Here, we are trying to go beyond affirmative action. We are saying that there are people, for example, rural women who are oppressed by culture, who are oppressed or who are disadvantaged because they cannot earn, they do not earn money. So we think that Parliament can make laws, programmes that are going to uplift these people specifically, sectoral laws specific to these people. So we ask Parliament to make those laws for the purpose of giving full effect to Clause (1).

In (3), we call for the establishment of a Commis-

sion, an Equal Opportunities Commission. Here again we are saying that these groups are marginalised and by virtue of being marginalised, they are not represented in the mainstream structures of governance, they are not there in the right numbers. So when we make the laws, however beautiful these laws are, they can remain a dead letter unless there exist a watchdog on behalf of these people. So when we were canvassing for support for the Commission, we found that there were concerns about a Commission with enforcement powers. What we are asking for here is a Commission which is merely a watchdog, a Commission that is advisory, advising Parliament on the legislation to affect these groups and that also monitors the implementation of the laws and brings to the notice of the authorities how these groups are affected by the laws. So we are merely calling for a watchdog Commission, of course which will be composed of people from those groups. I think that goes without saying - to be the mouthpiece of these groups that are not at the moment or presently well entrenched in the system, particularly of justice.

We are not innovating, what we are asking for is not happening for the first time in the whole world. We are taking examples from anti-discriminatory laws that exist in other countries, from the strategies that other countries have taken to empower the disadvantaged people. For example, in Sweden, they have sectoral laws that protect the right of the disadvantaged, particularly women and they have an Equal Status Commission which has achieved very much on the part of women using those laws that were enacted. In Britain for example, they have an Anti-Discriminatory Law and a Commission for Racial Equality. This is a Commission specially put there for those discriminated against for reasons of race. South Africa, where they were making a new Constitution, they made a Constitutional provision for the very laws we are asking for and also provided for a Commission that will follow up the implementation of these laws. So we are not being adventurous, we are learning from the examples of other people, other countries who have been dealing with issues of the disadvantaged and discrimination.

Mr. Chairman, I am happy to say that our Article is supported by people who represent the interest of the disabled, for example, and of minorities too and the women and I really urge the House that, since this is the first Article to be tabled today it may bring luck to the House to pass it unanimously. Thank You.

THE CHAIRMAN: Have you completed your presentation Hon. Byanyima?

MISS BYANYIMA: Yes, for the time being.

THE CHAIRMAN: This is a Motion moved to insert a new Clause 61, Affirmative Action in favour of Marginalised Groups, sponsored by Hon. Byanyima, Hon. Mazima, Hon. Rhoda Kalema, Hon. Chebet Maikut and Hon. Dr. Crispus Kiyonga. *-(Interjection)-* You are seeking information or you want to contribute.

MR. KARUHANGA: Mr. Chairman, I just wanted to inform you and the House on the position of the Legal Committee on this issue, with the permission of my Chairman and Vice Chairman. Mr. Chairman, the Legal Committee discussed this and we are in total agreement that this is a very good amendment or addition to our Constitution that it will lend respect to our Constitution internationally and the issue of affirmative action is indeed a very important issue in the modern world today especially picking those groups of people who have been marginalised and left behind, down trodden and bringing them to enjoy democracy. We feel that the test or the litmus paper test of enjoyment of democracy can only be seen by the happiness of those people who have been minorities and left behind and under trodden.

Mr. Chairman, we think that this is a very good addition to our Constitution, however, we would like to appeal to the Mover, or the Movers to accept, for purposes of clean drafting, dropping their Clause (3) because that Clause (3) only introduces the words *“Equal Opportunities Commission”* and we just want to pick that Equal Opportunities Commission alone to bring it up in (2) and everything else remains as it is and we drop (3) and we have a clean, neat statement. There was no objection from them when we discussed this and we are hoping that the Mover will not be pushing that line. So I would like to read the actual words if she can accept or she can read the wording herself.

THE CHAIRMAN: No, could you read what you propose so that we see how (2) would read with the ideas you have.

MR. KARUHANGA: Right. This is 61 (2), Mr Chairman, *“Parliament shall make relevant laws for that purpose of giving full effect to clause (1) of this Article including the establishment of the Equal*

opportunities Commission.” And then we have in her amendments 61 (1) and (2), and we drop (3) and our Committee would be very happy with that and we appeal to her to accept that line.

MISS BYANYIMA: Thank you Mr. Chairman. Just to be sure I appreciate very much the remarks and the suggestion of Hon. Karuhanga. Can I read it out and see if that is what you mean? *“Parliament shall make relevant laws including the establishment of an Equal Opportunities Commission for the purpose of giving full effect clause (1) of this Article.”* Mr. Chairman, if this can bring us luck this morning to pass this unanimously, I would be willing and my co-sponsors would be willing to concede. Thank you.

THE CHAIRMAN: Hon. Byanyima, could you read it out again so that the Members get exactly the effect of the proposed change?

MISS BYANYIMA: Article 61 (2): *“Parliament shall make relevant laws including the establishment of an Equal Opportunities Commission for the purpose of giving full effect to clause (1) of this Article.”*

THE CHAIRMAN: Okay, Members you have heard, you should be prepared to accept that?

MR. OMARA ATUBO: Mr. Chairman, I fully support this new Article but as I told the sponsors yesterday and this morning, Sub-clause (3) was not really necessary and I would fully go ahead with the proposal of Hon. Elly Karuhanga that we put it soon after *“relevant laws”* because in the relevant laws they will be able to establish that Commission. But, Mr. Chairman, I am looking at the words *“Equal Opportunities Commission”* as being slightly narrower than what an *“Independent Commission”* to be established by Parliament will be.

Mr. Chairman, the *“Equal Opportunities Commission”* as we understand it in Britain and other countries really is dealing with things like employment problems and even racism and so on but I think that the affirmative action or marginalised groups or disadvantaged groups is slightly broader than this. You are going to include children, you are going to include the disabled, we have already talked of gender, age, disability and so on and it is not just a question of equal opportunities. You are going to look after the total welfare of these people, how they

are disadvantaged or marginalised. So I would not, at this stage accept a situation in the Constitution where this House will tie the hands of Parliament by calling that Commission "*The Equal Opportunities Commission*". What I believe that the sponsors of this Motion want is simply an independent Commission and I have already told them that just include the words "*make relevant laws which shall include the establishment of an independent Commission*" and you leave it at that. What Parliament will call it, whether it is Equal Opportunities Commission whether it is dealing with NUDIP, whether it is what, definitely all these are not as narrow as simply calling it "*Equal Opportunities*". So I urge the sponsors to say you remove the words "*Equal Opportunities*".

Secondly, Mr. Chairman, this affirmative action or marginalised groups is broader than simply including this new Article after Article 60 and, including it as 61. If you look at the logical sequence of numbering, 60 is dealing with the protection of the family, the present 61 is dealing with the right of women, then the rights of children and then we go ahead and the rights of disabled and handicapped persons. Mr. Chairman, the proposed, affirmative action Article is encompassing gender, age, disability and I think if you read the words "*or any other person*" that come about because of race and so on as time goes on.

So I think that the proper place to put that umbrella Article - I call it an "*Umbrella Article*", should come after we have dealt with the family, with women, with children with the disabled and to me, the proper place is really after 63 not immediately after 60, so that after we have mentioned all the other groups, we leave it at that. Mr. Chairman, this is intended to improve what is already there and I think it is a good article. We should support it with the proposed improved amendment. Thank you Mr. Chairman.

THE CHAIRMAN: Thank you. Can I suggest this approach so that we do not steal it over. We do two things first, the House seems to be in the mood to accept the modification proposed by Hon. Elly Karuhanga and accepted by the Mover on behalf of the other Movers. So that we do not have to vote on that one, to modify it, to drop the (3) and modify (2). The question of location, in my view, we should leave it to the Technical Committee. In other words, if we pronounce ourselves in favour, then the Technical

Committee will, in view of the remarks made by Hon. Omara Atubo, be directed to place it at the correct place of sequence in accordance with the whole text.

MR. ABU MAYANJA (Busujju county): Thank you very much, Mr. Chairman. Mr. Chairman, I am a hundred percent in favour of the rights of women, children, disabled persons and removing discrimination but I am a little worried as a matter of law when the Constitution directs Parliament to make Laws to this effect. What happens if there is no money to take action to redress the problem of disabled persons or children? Now, for instance, we know that children are on the streets, the remand homes are nowhere near equal, does somebody take the government to court? So I would like us to be careful, to appreciate what we are - is this a statement of pious intent or is this a direction by the Constitution to Government to take action and what happens if they do not take action for those people affected to enforce their rights in the courts of law? Mr. Chairman, I am a little worried about that and I will be grateful if the Movers can give me clarification.

THE CHAIRMAN: I will ask one of the Movers, Hon. Chebet Maikut, to make a contribution.

MR. CHEBET MAIKUT (Kween County): Mr. Chairman, I would like to respond very briefly to a query or a point of clarification raised by Hon. Abu Mayanja and I wish to say that in the spirit of moving this Motion, we do appreciate that at one time or one stage or the other, the government of the day may not have the resources necessary to put in place whatever provisions are, either in our Constitution or in other relevant laws or and other objects but all what we are saying is that this provision seeks to redress the problems as raised by Hon. Winnie Byanyima in the text just read. So in our opinion, we feel the fear raised by Hon. Abu Mayanja is basically administrative, which can be handled at any other opportune time. So, Mr. Chairman, I urge all Hon. Delegates here that we, in good spirit, support this Motion, pass it wholeheartedly because one may argue that one group that is now disadvantaged at this point will not necessarily mean that that group will always remain disadvantaged. In actual fact, a class structure or sex or any other social group that is not disadvantaged at the present time may at one time in the future be disadvantaged as a result of either natural a disaster like the earthquakes or any other

man made causes like the floods. So this is really an opportunity to redress such imbalances that may occur in our society. So Mr. Chairman, I think we support the Motion. Thank you very much.

MR. MALINGA (Usuk County): Mr. Chairman, I support the proposed insertion wholeheartedly but I would like to agree with the Hon. Abu Mayanja that wherever we say that Parliament shall make laws or we want this, I think the best formula to say is that Parliament may. If you look through, it is consistent with all other provisions in this Constitution, look anywhere else where the Constitution is directing Parliament, the expression is "*Parliament may*" not "*shall*". We must respect parliament and not give it directives.

Then secondly, on the amendment, instead of speaking of groups only, I think we should say that "*in favour of marginalised groups or individuals*" because there may be individuals who may be also marginalised. So I move that we add the word "*individuals*" and "*may*" and then - let me leave it at that.

MR. WAGIRA (Kibuku County): Thank you, Mr. Chairman. I would like first to allay the fears of the Members as to resources because one man said that where there is a will, there is always a way such that if we give this amendment a good-will and we put it in our Constitution, I know the country cannot fail to address this issue and I know God cannot fail to answer our prayers.

Mr. Chairman, if we are going to look at these disadvantaged groups as Hon. Chebet Maikut said, we are actually making a law almost for all of us. At one time, we have the children and we very well know as the provision in UNICEF says that this world was not left to us by our grand parents but we are holding it in custody for our children. About the issue of disabilities, we are all prospective people with disabilities. You may board a taxi, an able person and at the next stage you alight it as a disabled person. So I would feel, Mr. Chairman, this is a law which is meant to guard all of us and we should give it all the support that is necessary.

Mr. Chairman, about the Commission, I also agree with the Members who have said that we need an independent Commission. Justice Udo Udoma said that "*Human rights is the shelter for the disadvantaged while the Commissions are those which serve*

as shelter for those who are not catered for by conventional institutions". Since the conventional institutions have not much addressed the plight of these disadvantaged groups, the idea of a Commission is quite in Place. I thank you, Mr. Chairman.

MR. SABIITI (Rukiga county): I fully support this amendment but I would like to get clarification from the Mover whether she looked at Articles 13, 14, 15, 16 and 17 because these also touch on the same issue. I remember the House requested the Legal and the Drafting Committee to have a look at this Chapter and report to this House. So I would request that this matter be first fully discussed with the Legal and Drafting Committee and then amalgamate this amendment with this particular Section in Chapter Three to come up with what really the House should adopt. Thank you, Mr. Chairman.

MR. KISAMBA MUGERWA (Bamunanika County): Thank you, Mr. Chairman. Mine is very brief. I support the amendment and I would like to allay the fears of Hon. Malinga that unless he has put in quite a number of amendments, just by perusal, you will find that almost on every other page, there is "*Parliament shall*". In Article 62, there is where "*Parliament shall*" Article 66 (2) there is "*Parliament shall*," Article 91 (1) there is "*Parliament shall*", Article 109 (1) there is "*Parliament shall*". So there are so many areas where "*Parliament shall*" and it seems it depends on the matter.

THE CHAIRMAN: Hon. Member, there is information from Hon. Kuteesa Sam.

MR. SAM KUTESA: Thank you, Mr. Chairman and I thank Hon. Kisamba Mugerwa for yielding the floor. I would like to inform him that in fact, in every provision where a commission is being set up, be it the Human Rights Commission, be it the Judicial Service Commission, in this Draft, we do not only tie the hands of Parliament, we actually say "*the Commission shall be established*". In this case, we are only saying that "*Parliament shall establish a Commission*". So, I think in every other provision where commissions are being established, it has been more mandatory than what is being proposed in this amendment. If you look at Article 173, if you look at Article 76 that sets up the Human rights Commission and Judicial Service Commission, the position there is more mandatory than it is being proposed and I think that Hon. Malinga's fears are not well founded. That is the information I want to give you.

MR. KISAMBA MUGERWA: Mr. Chairman, I thank Hon. Kutesa for his contribution by way of information. It confirms what I have been trying to say that actually it depends on how we see the matter and if this actually is an important matter, we can as well say "shall" and if in his view it is not all that important, then let it be as an objective and refer to the Drafting Committee but I will end up by saying that I think it is well placed. Thank you.

MR. TUMUKUNDE (Rubabo County): Mr. Chairman, I beg to support this amendment. Mr. Chairman, Major Henry Tumukunde (Rubabo). In the first place, Mr. Chairman, we know very well that we are coming out of a very bad situation where, to use the words that are in this amendment, "marginalised groups", be it for gender, especially for gender, of course, and even disability, have been so suppressed. I think to address an extreme position, we may have to use some times directive words like "shall" to make sure that we address the problem that is so well known to us in our situation here.

Mr. chairman, another important point is that these marginalised groups need some sort of judge or somebody to resort to in case of failure to execute these laws because I do not think this shall be our first time to have these laws in our Statute Books. What the Movers here, I am sure, are worried about is who is going to make sure that what is written in the laws is actually executed accordingly. In this particular case, Mr. Chairman, this Commission - that is if I was allowed to quote (3); this Commission would have a supervisory role and would also stand in to make sure that, in case of any of these groups being suppressed, they will rush in to say something and, of course, I also imagine that once a Commission is set, particularly to do this job, they will also try to find a job for themselves and may be in the process, you know some imbalances will be addressed. I must, Mr. Chairman, quote examples of areas like Sweden, although there are some extreme situations where people have even reached levels of contracting two months of marriage and so on but still you see that there is the freedom and it is well supervised and people have got an appeal court in case of problems.

So, Mr. Chairman, I beg to suggest that this House cautiously considers this amendment and allows it to pass so that we may protect our marginalised groups and this, I think, will even extend to political groups who are marginalised or the religious groups so that

they have an appeal court or they have where to go in case there is any imbalance which they can express and make sure it is very well addressed. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, we have had a number of speakers on this subject. We have not had any dissenting voice, have we? Should we go on with the debate or we just pronounce ourselves on it. Okay, let me put the question.

(Question put and agreed to)

THE CHAIRMAN: So we have a new clause 61 and what is 61 now becomes 62 but we shall leave that to the Technical Committee to work out, we do not have to bother ourselves at this stage. Now, there appears to be no proposed amendment on 61 as it stands. I want to put the question on that one, let me put the question on 61.

(Question put and agreed to)

THE CHAIRMAN: Now, the present 62 which will become 63. There is a proposed amendment by Hon. Mazima.

MR. MAZIMA (NUDIPU): Thank you, Mr. Chairman. There is a new amendment to be moved to become Article 61 clause (1) and (2) by Hon. Mavengina and we have not looked at that. Mr. Chairman, I was seeking clarification because we are moving to the current 61 (1) whereas there is another amendment transferring one of the Articles in Chapter 3 to 61. Are we going to look at that at the end? It is item number 7 on page 2.

THE CHAIRMAN: Well, the papers I am working on - *(Interjection)*

MR. MAZIMA: Page 2 which was circulated yesterday, Mr. Chairman, end of page 2.

THE CHAIRMAN: Can we get clarification from the Legal and Drafting Committee.

MR. BEN WACHA: Mr. Chairman, Sir, if you could look in your papers of yesterday, the papers which were circulated yesterday, immediately after the amendment that we tackled yesterday on dissolution of marriage, there is on Page 2, paragraph 7, a statement to the effect that "Article 61 Clause (1) and (2) on page 24 of the Draft be deleted and new

clauses (1) and (2) inserted therein on the following terms" and then it continues to Page 3. The proposed amendments are that "the State shall recognise the significant role of women in society..." and then another clause (2) that "The State shall protect women and their rights..." These were to be moved by Hon. Mavengina Akumu and Hon. David Onyok-Etuku. I do not know whether Mr. Chairman you have got those papers.

THE CHAIRMAN: I have just seen them.

MR. BEN WACHA: May be we take it that our pronouncement was on the amendment on Hon. Winnie Byanyima and then these other Articles be tackled.

THE CHAIRMAN: You see, having dealt with that one, then that became 62 and I put the question on it before we benefitted from this. Now, there is a number of amendments proposed on 61 apparently.

MR. BEN WACHA: Yes, 7, 8, 9, and 10.

THE CHAIRMAN: I guess we will have to re-open.

MR. BEN WACHA: That could be proper, Mr. Chairman.

THE CHAIRMAN: We are re-opening 61/62. We re-open it for the benefit of the Members who had to circulate their amendments. We have Hon. Mavengina proposing to delete clauses (1) and (2) of 61 and inserting in a new proposition. Hon. Mavengina could you present your case please.

MRS. MAVENJINA AKUMU (Women - Nebbi): Thank you, Mr. Chairman. Mr. Chairman, I would like to correct some typing errors or may be what was left out by the Legal and Drafting Committee. When I wanted to move Article 14 to Article 61, I did not mean to delete (1) and (2), instead I wanted Article (1) and (2) of clause 14 to become part of Article 61 so that Article 61 would have now clause 6 instead of 4.

THE CHAIRMAN: Well, let us hear from the Committee. The Committee seems to have presented it that you wanted to delete (1) and (2) of what is now 62. You say that you wanted to insert these two at the end, is it?

MRS. MAVENJINA AKUMU: Mr. Chairman, I think it was a typing error because the Articles are different and their meanings are different, so it would be wrong to delete (1) and (2) and insert (1) and (2).

THE CHAIRMAN: Let us hear from Hon. Kanyeihamba then.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman, the Hon. Mover is absolutely right, it was never intended to delete (1) and (2) because they have different principles so the amendment was an addition to those which were already there. I thank you, sir.

THE CHAIRMAN: But at the bottom of it or at the beginning?

MRS. MAVENJINA AKUMU: At the beginning.

THE CHAIRMAN: So that it is (1) and (2) and then the others become whatever. This is seconded no doubt. Could you give your arguments please?

MRS. MAVENJINA AKUMU: Thank you, Mr. Chairman, before I give you my argument, I would like also the word "significant" to be removed so that the Article reads "The State shall recognise the role of women in society and provide the facilities and opportunities necessary to enhance their welfare to enable them to realise their full potential and advancement" and (2) "The State shall protect women and their rights taking into account their unique status and natural, maternal functions in society."

Mr. Chairman, both of these Articles are very important. Article 14 addresses the protection and the rights of women whereas Article 61 talks of the protection of the rights of women. The two Articles are very important and they are closely related. Therefore, I felt it necessary to remove Article 14 to become part of Article 61 because they are closely related. It is important not only to have the rights of women guaranteed but to have them protected as well. Mr. Chairman, I beg to move.

THE CHAIRMAN: Yes, the question is that Article 62 as it is now going to be numbered, be amended by inserting new Clauses (1) and (2) and then re-numbering those that are there.

MR. BANTARIZA (Buhweju County): Mr. Chairman, I wanted to have some clarification with

regard to the other previous amendment by Hon. Winnie Byanyima which we have just passed. What is the difference between this one on the floor and the one we have passed?

THE CHAIRMAN: The other one talks of affirmative action for all disabled and disadvantaged. This one talks of women only.

MR. BANTARIZA: The women are there.

THE CHAIRMAN: Yes, but the context is different, it is a different context.

MR. MUSOBYA (Kagoma County): Thank you, Mr. Chairman. Much as I may support this amendment, I would like to clarify on one point that women and the youth form the same Ministry and they are the ones who have been marginalised in facilities that can enhance their economic status. So, I propose that after the word "women", two words should be added, that is "and the youth." So I beg to move.

THE CHAIRMAN: Now, are you moving that as *(Interjection)* - has it been seconded?

HON. MEMBERS: No.

THE CHAIRMAN: Then you cannot proceed on it.

MR. OKWAKOL (Pallisa county): Thank you, Mr. Chairman. Sir, I support this amendment. The reason, Mr. Chairman, is that, at the very outset of this Assembly, we did recognise that there is need to establish or to make a short, precise, constitution. Mr. Chairman, it is a little alarming that hitherto, it has been a tendency to create new clauses, all together new, added to what is already in the Draft Constitution and my fear, Mr. Chairman, is, at this rate, instead of producing a short, concise Constitution, we shall end up with a Bible. Be that as it may, Mr. Chairman, I would support this because it has the spirit of amalgamating the various provisions, therefore obtaining the purpose of shortening the Constitution. I support the amendment.

MR. KABUGO (Nakaseke County): Thank you, Mr. Chairman. I wish to draw the attention of the Mover of this Clause that if she goes on page 7, Chapter Three, what is written here is also found on this page, Clause 13 and 14. Is she suggesting that we transfer the whole text from here to this Section?

THE CHAIRMAN: Yes, that is what she said. She said that she preferred that it was removed from Chapter Three.

MR. KABUGO: Okay, if that is the case then I would not have any objection to the arrangement.

MR. KWERONDA RUHEMBA (Kajara County): Thank you, Mr. Chairman. I wish to oppose this amendment for a number of reasons. One is that we have not decided on the fate of Chapter Three and I think at this juncture, we should may be, Mr. Chairman, be cleared of this scenario, whether Chapter Three still stands and we shall come to debate it or whether we have agreed that we should disband it because you remember the other day, Hon. Cecilia Ogwal borrowed the whole of the wording in 12 and now this present Mover is taking the whole of 14 and making it an amendment in 62. So, Mr. Chairman, I think that should be cleared first. Is Chapter three standing in its own right and, therefore, it is going to be debated in future or we have agreed that it should be dismantled and disbanded to relevant areas? That is one.

Number Two, Mr. Chairman, I oppose the Motion because I think we are overloading this Article with insatiable statements of women. They seem to be demanding (a), (b), (c), (d) (e), (f), (g) until (z). - *(Interjection)*

THE CHAIRMAN: Are you saying they are not entitled?

MR. KWERONDA RUHEMBA: They are entitled, Mr. Chairman, but when it comes to overloading, I object, Mr. Chairman and I thank you very much for that.

THE CHAIRMAN: I am glad that the ladies are taking this matter with the tolerance understandable. I do not think we should pursue it any further than it has been made. On the question of the fate of Chapter Three, I think the House is entitled to shift Articles around whether be they from Three or elsewhere so I do not see why we should give Three a special protection. The Committee will come back to us in due course but we are entitled to shift Articles form point to point.

MR. BATEGANYA (Bukooli County): Thank you, Mr. Chairman. I would like to suggest that Article 14 as proposed here and Article 62 be

referred to the Legal and Technical Committees so that they merge them and re-write them in such a way that we have a short Article instead of having 6 Clauses. The two could be written in such a way that we do not lose the meanings but they are expressed in fewer clauses. Thank you very much, Mr Chairman.

MR. KAYONDE (Gomba County): Thank you, Mr. Chairman. Mr. Chairman, I support this amendment. When you look at Article 61 and other Articles we have already passed, it is talking about equality of women and men but this amendment is bringing out something which is new that the State should recognise that the women have not had opportunity to show their full potential and therefore that should be recognised and something must be done about it. And part two of the same amendment is also recognising the unique status of women, their natural maternal functions which is a very important aspect that because of this division of labour, they have a special role which must be recognised. So I think it is very important and this amendment is bringing out a new outlook while we are talking about equality of men and women but we must also recognise that they play other roles which the State and the society must recognise. Thank you.

MR. OKALEBO (Bukedea County): Thank you, Mr. Chairman. Recognition of rights of women is a concept we are all in agreement with and that being the case, the amendment as proposed is in good faith.

MR. AMANYA, MUSHEGA. Mr Chairman, this Constitution is bound to be there for many centuries and there is no guarantee that always women will be disadvantaged. I think the Draft should be providing that men and women should be provided equal opportunities, that will be the best way of putting it so that if tomorrow women are dominant, the men do not have to go and amend the Constitution, they will be protected. - (Applause). So, that is my worry. My worry is that we are drafting as if the world is not dynamic, and situations are not changing. Already, there are areas where women are dominant, they may be small but they are building up. So, I think the drafting should be looked at, that we are writing a permanent document and not a document addressing problems of today. It Provides equal opportunities and if tomorrow, the women are the dominant force, then the men also will make the Constitution for protection. But the way it is written now, if tomorrow the women dominated men, the Men will not resort to the Constitution for protection - for redress.

I support the Amendment. I support the spirit, but the way it is worded, addressing the problems of today, it is not written in such a way that any group which is oppressed more on grounds of sex can easily resort to the provision of the Constitution without having to be disadvantaged or having to seek to re-write it. I would like to appeal to you Mr Chairman, that the Legal and Drafting Committee should look at this - that oppression is not always one way. Only a few centuries ago, Britain was dominating the United States. Now it is the reverse. A few centuries ago, we were the colonised people here, the natives were more oppressed. I am sure now the White men living in Uganda would like to be protected against racial discrimination. So, it should be written in a neutral manner, allowing everybody who is oppressed on grounds of sex to get recourse to the Constitution. That is all I wanted to say to the people who are proposing the Amendment - (Interruption)

THE CHAIRMAN: That is a contribution.

MR. AMANYA MUSHEGA: Thank you Sir.

THE CHAIRMAN: No, the point is this, that we are debating an Amendment proposed by Hon. Mavinjina. It does not read in the terms in which Hon. Mushega has put it. In fact, if you look at 61 (2) in the text, what he is worried about is there - that the treatment should be equal and in those various fields. I am sure men can use that to assert their rights also, should the situation change. Hon. Kabwegyere, I wanted to put the question, but it seems.

PROF. KABWEGYERE: Thank you, Mr. Chairman. First of all, I want clarification from you and possibly also the mover because, what are we trying to achieve? We are trying to achieve the protection of women, we are trying to achieve to have a society that advances or gives equal opportunities to women as well as men. Now, on one hand, this Clause (1), is taken from objectives - the objectives really, as conceived in Chapter 3, are totally different. These are objectives you can pursue - society must be encouraged to pursue. Now, on the other hand, when you are talking of a policy that must be implemented, then you are talking a different thing, that is when you can be directive. Now, the State shall recognise the significant role of women.

THE CHAIRMAN: You should remove the word "significant". The word "significant" was removed.

PROF. KABWEGYERE: It was removed, okay. Now, but you could as well perhaps when we come to children, say the State should recognise the role of children.

THE CHAIRMAN: Yes, why not?

PROF. KABWEGYERE: At the end of the day, Mr. Chairman, I feel a mutilation of the Chapter in this manner will distort, in my opinion, the objective as intended. On the other hand, here, if we are talking of the advancement and the affirmative action that we are talking about, the Amendment that we have passed a while ago is in that spirit and 61 (2) as we have said, Mr. Chairman, is there. I do not see therefore, why we should even go to (2). *"The State shall protect women and their rights, taking into account their unique status and their natural maternal function"* but about men, they have also paternal- they have paternal functions.

THE CHAIRMAN: Why do you not move an Amendment at the right point?

PROF. KABWEGYERE: I am wondering who is even relevant or necessary?

MR. KATUREEBE BART (Bunyaruguru County): I think I should give this clarification. We are trying to mix up two different concepts. Under Chapter 3, Clause 14, you are spelling out the obligations of the State, what they have to do to protect women's rights. Under Article 61, you are talking of rights of women as against everybody else in society, rights in rem of women. These are two different concepts. One, you are talking about what the State has to do, and the other one you are saying, a woman has such rights, even if she walks into your private chambers, in your private office of work, she has those rights whether you are the State or not. Those are two different concepts, which this Amendment is trying to marry together.

THE CHAIRMAN: Anyway, let us put the question.

(Question put and agreed to)

THE CHAIRMAN: There is a further Amendment to what has now become Clause 6, by Hon. Rhoda Kalema. Please move your Amendment.

MRS. RHODA KALEMA (Kiboga County East): Thank you, Mr. Chairman. Mr. Chairman, first of all, I would like to correct an error here, where the Amendment paper says we have to delete Clause 4. My intention is not to delete Clause 4, but to insert a Clause immediately after 3, before 4. As a matter of fact, I very much like Clause 4 and I feel it is very appropriate for it to come at the end of this Article. The Amendment I am moving, Mr. Chairman, once again, as we have been doing since yesterday, to move Article 15, from Chapter 3. The only Article is the Clause: "The right and the welfare of all widows shall be protected by the State." Mr. Chairman, - (Interruption)

THE CHAIRMAN: Are you seconded? Okay, seconded by Janet Mukwaya and many others. Please proceed.

MRS. RHODA KALEMA: Mr. Chairman, I am moving this Amendment because I feel that widows should be protected by the State as an affirmative action. In the Draft Constitution, this is among the National Objectives and Directive Principles of State Policy. This right in the Constitution is not new, it is just being moved. But the principle behind this Amendment is due to the fact that the rights of widows should be appropriately considered under rights of women. Widows, after they have mentioned this Article, it is mentioned in Article 15. Unfortunately, it does not appear again and it is not automatic. That it is considered among all the Articles in 61, 62, 63, I feel that it is necessary for it to be tackled and considered as a separate Article which Government should stop to take great consideration for. In a society, we all know that widows have suffered tremendously at the hands of their in-laws and the clansmen, when the property and funds have been taken away from them after the death of their husbands. Women have been locked outside their very homes where they have lived, sometimes 20 years or more and for this reason, it is very necessary that it becomes a Government commitment and should be in the Constitution so that from now on, Government should take the responsibility to protect the widows.

Mr. Chairman, unfortunately, in quite a number of our cultures, women, I understand, are shared by families, women are not married to one man, they are married to the families and unfortunately, this makes it easy - this has been making it easy for the women to be inherited themselves as property. And once they

inherit the widows, then it is even more easy for the property to be taken from them. So, Mr. Chairman, I feel that the Members in this Assembly, the Hon. delegates, will agree with me and support me, that we make it clear in the Constitution that from now on, after the Constitution is promulgated, widows are protected by the State.

Mr. Chairman, there is still another problem. If widows are just thrown out and they are at the mercy of the clan and the relatives, this makes the children - the orphans to suffer. Children have suffered because all the funds and the property have been taken by the clan and because of this, we come across a problem of having the orphans suffering together with their mothers. So, I do not think I need to emphasize this much more because a number of us have seen this problem, where their relative widows have had to fall on them for help and then they are helpless because there is no law to protect those widows. In fact, if Members may remember, the very case that sparked off women to start fighting for their rights in 1956 was about the widow who was thrown out and had two young children and the clan wanted to take the property. She was permanently thrown out and she has never been there again since 1956. So, I would like to ask the Members to support this transfer of Article 15 from the objectives so that we do not leave the Article at the mercy of the Government of the day to take it as an objective which it may implement or may consider, but we put it in the Constitution and every widow can have the security to know that she is protected. And besides as we know, I think Uganda is leading in the number of widows - because you have heard widows being created by so many causes. So, it is all the more important Mr. Chairman, that we make this Article to be under the rights of women Article and it becomes a Clause. I would like it to be a Clause, then in this case, it should be Clause 5 and as you will see in Clause 64, Clause 64 will just compound all that has been debated above; 60, 61, 62. So, 4 will come after this Clause and it will compound it. I beg to move, Mr. Chairman.

THE CHAIRMAN: Let us first of all propose the question so that we know what we are debating. The Hon. Rhoda Kalema is moving that we insert immediately after the present Clause 3, actually it should be Clause 5, because of the other insertion we just made so that we insert the wording taken out of Article 15, that *"The rights and welfare of all widows shall be protected by the State"*. That is the Motion on the Floor.

MR. MUSOBYA LUBEGA (Kagoma County): Thank you, Mr. Chairman. Much as I may support the principle in that Amendment, it has been presented in a discriminatory manner. I am sure that in society, powerful women marry men, so even if they form the minority, they become widowers after the death of their women. So, I propose that the word widower should be included in the Amendment.

THE CHAIRMAN: But this part is about women! Hon. Nekyon.

MR. ADOKO NEKYON (Maruzi County): Mr. Chairman, I rise to support the Motion on the Floor, but I would like to give the following reasons behind it. First of all, I do not agree that widowers should be included in this Amendment because if the State supports orphans, and will regard an orphan as a child who has lost his mother, the State is already supporting the widower and if men begin to give way, and say that we also need support like women, then this country is going to the ruins. A man must be able to stand on his own even when he has lost his wife. After all, he stands on his own before he gets the wife. There is no reason why he should now give way.

Secondly, I say much of the trouble in the villages about succession arises now because men are not prepared to write a will before they die and this is what is causing confusion in the villages. People in Uganda still think that if you write a will, you die quickly, but death is there whether you write a will or not, it is coming. So, I think we should put pressure on men to start writing their wills to relieve problems which the widows are facing today.

Thirdly, there is the question of extended families which has been referred to where people say, the wife is married to a clan - yes, it is true. In the society from which I come, that is the belief and it is true a woman in Lango is married to the clan, but our people now think that they should get things free. So, when they hear somebody has died, they know there is really good ground for obtaining free things. The problem now is that we have to find a way of stopping people looking for free things and that is what we have to deal with.

Again, we have got the problem of witch doctor's and soothsayers, who are now ruling the countryside. One problem the widows are facing is that they are always suspected of having killed their husbands

and this is what the witch doctors are doing. They just present to somebody who is looking for who has killed that person, in such a way by describing the person, without mentioning the name, then everybody knows it is the wife. Once the situation is created by the witch doctor or soothsayer, then the widow is finished. Therefore, one thing which this country must face and deal with immediately, is the role of the witch doctor in a society. The witch doctor has been responsible for the spread of the AIDS disease because people die of AIDS. Once the witch doctor says the person was actually bewitched by *mayembe*, nobody is going to listen, they will proceed to inherit the wife of the man or the husband of the dead woman. So, the issue is as clear as that. I think we should support the Motion but deal with those specific issues which I have just put on record as a matter of urgency. I beg to support

CAPT. BABU (Kampala Central): Now, my only worry is this word "welfare". If somebody could clarify to me what they mean by "welfare" here. The rights of the widows should be protected but when you say the "welfare", who is supposed to protect the welfare? Because, my understanding would be that the welfare of the widow would be protected by the State in the sense that if somebody loses a husband, they might end up in a Welfare Office of the Government.

My next question is now, if this "welfare" can be defined to me, I am in support with this. We must support this because a lot of women who lose their husbands have faced a lot of hardships in the countryside especially and as Hon. Nekyon has rightly said, there is a lot of taboos and the witch doctors are doing quite a good job, but at the same time, Mr. Chairman, when I use the word good job, here, I mean they are helping the cause, I am not saying they are doing a good job in the sense of it. What I was trying to say here is that we must support these widows because we are having a lot of problems, even within Kampala here. You are describing the countryside, within Kampala in different areas, we have a lot of problems with widows who are left and are left especially like in a city setting, where they do not even have a small piece of land where they can grow food, it becomes even more acute because they are left alone and nobody is helping them. I think this cause must be supported. But I would like somebody to actually come out and define the word welfare for me here. Thank you very much, Mr. Chairman

THE CHAIRMAN: Let us ask the Mover to clarify that question of welfare.

MRS. RHODA KALEMA: Thank you. First of all, I will try to clarify what is put here as "welfare". Welfare or well being of The widow. I quite agree with Hon. Babu that you cannot expect the State to dish out money to all widows in a country, but by Government assisting the widow to keep her rights of the property and of the home, it is enabling her to enhance her welfare and or well being and also Government can always assist in the case of a widow who is not remarried. By the way, I am talking about a widow who is not remarried and who is not remarrying and not intending to re-marry. Government can always consider the need of that widow, but I would also like to comment on Hon. Nekyon's point, particularly the writing of the Wills.

I quite agree with him that because men have refused to write Wills, this is also creating a problem. Where a man wrote his will even if he made his daughter to be the heir, a male relative now can be the heir, but property can go to the woman without any going to his daughter. Wills have been very effective, but Hon. Nekyon will remember that in 1960, when the Uganda Council of Women and status of women sub-committee tried to woo Members in Parliament about writing Wills, they just laughed about it, they did not bother and also in the Marriage Commission which was set up, they also recommended writing of wills. For the last over 30 years, men have been very reluctant to make wills. So, perhaps, as we speak now, we can encourage and appeal to men to make wills. This will help.

The other point talking about witch doctors, Mr. Chairman, can I mention that? Witch doctors, he seems to know more about women visiting witch doctors which I personally do not - I have not seen many visiting witch doctors, but that should not stop the State from protecting the rights of the widows. If women are supposed to have killed their husbands or if women go there to find out who has killed their husbands, whatever the case, I think this is not an issue for this Assembly. The Constitution should be made to protect the women, once they are protected, perhaps they will give up the witch doctors. Thank you.

MRS. LOYCE BWAMBALE (Kasese - Women): Thank you, Mr. Chairman for this opportunity. I rise to support the Motion moved by Hon.

Rhoda Kalema and also wish to assist her when Hon. Nekyon pointed out that she should clarify on "welfare". I think the word "welfare" is too broad. I was proposing to the Mover that she accepts to delete the word "welfare" and substitute it with "well being" because "welfare" is too broad and "well being" could take care of the rural widows whom we are trying to fight for. Now, Mr. Chairman, my reasons for supporting this Motion is that the situation of widows has been pathetic for long and this is because as of today, Mr. Chairman, we lack enforceable laws under the Domestic Relations Bill, which is not in place at the moment and we lack enforcement of laws on inheritance together with the presence of oppressive cultures and customs which often deprive women and children of property.

One Hon. Member, Hon. Nekyon, mentioned the making of a will. I support that Mr. Chairman, because when men die without making a will or women die without making a will, in the distribution of property, you find that the woman is entitled to only 15 per cent. So, if this woman is entitled to 15 per cent, how will her well being be looked into on only 15 per cent and the children on 75 per cent? And many times, you find that the relatives scramble for the children so that they can benefit from the 75 per cent which is supposed to be allotted to the children and this leaves the woman with nothing at the end of it.

So, we want to use this opportunity to call upon our husbands to aspire to make their wills at all times so that women can be treated fairly. Before the making of this Constitution perhaps, the women may not have equal opportunities to property in a family, but we hope this House will cooperate so that at the end of it, we come up with a Constitution that is going to accord equal opportunity, equal rights of women and men to property. So, it is necessary that the State should look after the well being of the widows to help them from the grabbing relatives and members of the family and also finally, passing this and putting this responsibility as a right for widows will also assist widows to get lawyers in cases where the widows are being inherited by force. Mr. Chairman, you know that widows are being inherited by force and I see that if their rights are protected here, then this may protect the women from being forcefully inherited. I support the Motion.

MR. WANDERA OGALO: (Bukooli South): What is the guarantee of providing that now these

rights we are putting here must be given by court? What will be the limit? Where will the court stop if a widow goes to court and demands that she is entitled to something? That is my worry, Mr. Chairman. I would think, Mr. Chairman, that although it is brought in good faith, I would prefer, that it is left possibly under Chapter 3. Thank you, Mr. Chairman.

MR. MULENGA (Democratic Party): Point of clarification. The clarification I seek is with regard to widows' rights. The Mover did enumerate certain problems that widows have in life, in practice, but what rights are we writing in the Constitution? Because like the previous Speaker has said, if we are seeking to put in the Constitution rights of a widow to be enforced by the Courts, then the Court should be able to read from the Constitution what rights are being protected. Mr. Chairman, while at that, I wish to augment what the previous contributors have said, what Hon. Sabiti, Hon. Kabwegyere and others have said, that we seem to be losing sight of this distinction between Chapter 3 and Chapter 5.

In Chapter 5, we are supposed to put specific stated rights, inalienable or what we call fundamental rights and freedoms, whereas in Chapter 3, we are supposed to guide Government and future Governments and the organs of State and so forth. So, Mr. Chairman, I have no qualms about the protection of rights of widows being put in the Constitution, but they must be stated.

Now, let the Mover get in touch with those who can help to identify the rights and put them in a language that will be understood. But we should not put a vague statement that widows rights must be protected without specifying what those rights are in the document that is being made to protect them - I do not think that it can be assumed what the rights are. Whereas the statement is okay in the National Objectives Chapter, so that Government is asked to protect the widows and find out what it is necessary to do so in the case of rights as protected under Chapter 5, they should be spelt out. Thank you, Mr. Chairman.

THE CHAIRMAN: Is there a Member who is likely to assist us to spell out some of these rights? I think the point raised by Hon. Mulenga is quite right. What are these rights, if we put it there, that should be protected? Let us hear from Hon. Kweronda Ruhemba, then we shall come to the ladies.

MR. KWERONDA RUHEMBA: (Kajara County): I would like to concur with Mulenga.

THE CHAIRMAN: Then you are not helping us identify those rights.

MR. KWERONDA RUHEMBA: That these rights they are talking about, in Article 62, virtually are vague and are not there.

THE CHAIRMAN: I think let us first follow on because if you want to include it, it must be enforceable. If a widow went to court and said I come to enforce my rights, the court may ask, what are these rights?

MR. KWERONDA RUHEMBA: That is exactly the Amendment I am trying to move, Mr. Chairman. Are you objecting to my Amendment, Sir?

THE CHAIRMAN: Because, we are at the stage of identifying the rights.

MR. KWERONDA RUHEMBA: - the property rights for instance, when the man dies, in fact, that is the most contentious issue in the villages. When a man dies, the brothers-in-law, come and gang around and they want to chase this woman away, the father-in-law wants to reclaim what he had already given to the son and I want to protect this widow because it is the most contentious issue in the village. What should we do to this widow? Does she have a right regarding this property of the deceased at all? And this is the Amendment that I wanted to move in respect of that particular right.

THE CHAIRMAN: But you see, it can be a useful starting point because you are assuming that those are the only rights. Can we have a general discussion on what the rights are?

MRS. AKECH OKULLU BETTY (Women - Gulu): Mr. Chairman, I think the rights the women are fighting for are specifically three rights. One of which has already been stated, that is the right to property, but secondly also, the right to children. When a husband dies, sometimes, even the children are collected away from the mother and yet she actually wants to stay with her children and maybe look after them. Thirdly, the right to choose, like any ordinary person, if you are young, to choose again a new partner if you want to. Normally, this is not allowed as was said, because of this widow inheritance - *(Interruption)*

THE CHAIRMAN: Order, order.

MRS. AKECH OKULLU: In my area, Mr. Chairman, sometimes a woman is forced even to marry to re-marry a young boy she has helped to look after in her home. Somebody who stayed with you as a student, you are forced to marry him because you are supposed to remain in that home. If you cannot marry that boy, then you must leave your children, and you must leave your property too if you want to marry outside of the clan. So, if these rights can be protected and we women are given the freedom to choose whatever partners we want after the death of our husbands, I think then, our rights will have been protected. We feel that here, the State could help so that we are not property which is inherited by anybody who wishes to inherit us. Thank you very much, Mr. Chairman.

MR. TIGWEZIRE KASAIJA (Bunyangabu County): Thank you, Mr. Chairman. First of all, I want it clarified in my mind, more especially from the Hon. Members here who are pushing in for widows' rights. Mr. Chairman I am wondering whether widows would also want to fight for their rights to remarry so that they do not stay widows and are they going to fight for that right as a right to remarry so that one does not have to remain a widow all the time. You see, somebody is saying, I am a widow of my first husband, when I remarry in that clan where I was married, I continue to be called a widow and after getting property from your first husband and then you remarry, that you should remain with your property. Should you then remain with your property or you loose that property because for example, there are clans which give widows property when their husbands die and after we have given you that property, we do not expect you to remarry. Others expect you to marry from the clan and yet continue calling you a widow. So, we should make it clear, which rights You should continue enjoying, whether you remarry within the home or the clan, and continue to be called a widow or you loose that status of a widow once you remarry. Thank you, Mr. Chairman.

THE CHAIRMAN: I think Hon. delegates, the point was made by Hon. Mulenga and there has been an attempt to really define what those rights are because the statement as it stands would cause a lot of confusion in the judicial system because, if you are granting a right, and someone goes to court and says, I want to enforce it, the court will say which particu-

lar right? Then, it becomes a matter of argument. Can I suggest this that the Mover agrees that this matter be referred to the Legal and Drafting Committee? They go and take into account what Hon. Kweronda Ruhemba has said, what Hon. Akech has said, let it be debated at that point because the Member has got the Floor, she presented her Motions they had been debating it, but in the process of debating it, it has become clear that unless properly written, it can cause confusion and this can be done if we take advantage of the Legal and Drafting committee in view of the comments made with regard to the inadequacy of this write up. It was okay when it was written as an objective, but when you want to convert it into a right which is enforceable, then the question arises and therefore needs to be clarified and I would suggest that we refer it to the Legal and Drafting Committee.

MRS. RHODA KALEMA: Mr. Chairman, I accept your proposal in view of what has been discussed, particularly what has been raised by Hon. Mulenga about the rights. You know the lawyers have a way of looking deep, I am quite happy to drop - I would like to suggest that we can leave out "welfare", but emphasize these rights - we leave it to the Legal Committee, but this is how I would like it to be. What I mean, the rights of any widow as - *(Interruption)*

THE CHAIRMAN: But you see, now we cannot go on to debate it when

MRS. RHODA KALEMA: The rights of any widow are really rights to property, but also rights to children.

THE CHAIRMAN: But you see, Hon. Kalema, if we agree that we are handing over this matter to the Legal and Drafting Committee, I would suggest that you attend the Committee with the assistance of Hon. Mulenga and Hon. Kweronda Ruhemba has ideas and may be other Members who may also wish to contribute, and then you come back with a re-drafted article. Otherwise, if we begin discussing the details of it here, we cannot come to an end.

MRS. RHODA KALEMA: I accept, Mr Chairman.

THE CHAIRMAN: Thank you. So, the matter stands referred to the Legal and Drafting Committee.

AN HON. DELEGATE: Mr. Chairman, thank you very much. Using the same argument, I am wondering whether the Clause we have just passed of Hon. Mavunjuna makes sense. In my view, when we talk about the State - I know we have passed it, but I think it poses similar problems to those that have been expressed for that of Hon. Rhoda Kalema. When you say the State shall recognise the role of women in society and provide facilities and opportunities necessary to enhance them, you raise a problem. So, Mr Chairman, I appreciate we have passed it, but could it be re-opened?

THE CHAIRMAN: No, these are opening statements, then subsequent to that, we have specific rights. It is not the same as this other one. This is subject to the other more specific arrangements which are within that Clause. So, I do not think really we are gaping to face problems with this, but this other one was definitely very unclear as to what those rights were. It was as good as a statement, but not as a conferment of rights. Can we leave that at that and then we shall come back to it when it comes from the legal and Drafting Committee

MR. AMANYA MUSHEGA (Igara County East): Mr. Chairman, in this Constitution, we are providing for equal rights and opportunities for men and women and I would like, through you Sir, the Drafting Committee to look for a place where to place the widowers. I am raising it for a number of reasons. At the moment, even currently, there are many men because of these equal opportunities, who are married by women and the women are the main bread earners and this young man is there doing all the chores of running up and down. If this woman dies, this man is placed in the same position as the current general situation of the women. So, they need some protection, if we are going to be serious about equal rights.

THE CHAIRMAN: I think we cannot make this reference to them here

MR. AMANYA MUSHEGA: So, I would like the Drafting committee also to look at that aspect of protecting the minority men who are now edges of well-off women, otherwise it will not be proper. Secondly, - *(Interruption)*

THE CHAIRMAN: I think you are now making a contribution, we have a specific - *(Interruption)*

MR. AMANYA MUSHEGA: On rights of women - people who have lost spouses -

THE CHAIRMAN: But no, this is specifically about widows under a section dealing with protection of women.

MR. AMANYA MUSHEGA: And widowers? We are lost, they are not anywhere.

THE CHAIRMAN: Would you like to come with an Amendment at an appropriate point and then we shall proceed with it?

MR. AMANYA MUSHEGA: Except there is no section on men at all.

THE CHAIRMAN: But you can create one, this is what I am trying to say.

MR. AMANYA MUSHEGA: Thank you sir

THE CHAIRMAN: I think let us proceed to the next. There was an Amendment by Chebet Maikut, but I received a note that there has been a compromise re-draft and it is supposed to be adding another Clause to Article 61. Hon. Mvingo Kezimbira, Hon. Chebet Maikut and Hon. Mugenyi are sponsoring an Amendment on Article 61 by inserting a new one at the end or was it supposed to be No. (3)?

DR. MIYINGO KEZIMBIRA (Bukoto Mid West): Point of procedure. Mr. Chairman, I think our Amendment should come under 62 not 61. Hon. Chebet having agreed with us to merge the two, we have to move it to 62.

THE CHAIRMAN: So, we strike out 9 and there is a proposed Amendment that the present Clause 4 - or any way, it has become I think 6, that it be deleted and a new one be inserted moved by Hon. Semala Kiwanuka and Hon. Mvingo Kezimbira. I give the Floor to Hon. Semala Kiwanuka.

MR. SSEMAALA KIWANUKA (Kvamuswa COUNTY): Thank you very much, Mr. Chairman. Sir, I would like to move an Amendment in Article 61, sub-article 4, and I would like it to read that "*Laws that are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution*". I would like the words, "*cultures, customs and traditions*", deleted.

THE CHAIRMAN: Is it seconded? Please go ahead and give your reasons.

MR. SSEMAALA KIWANUKA: Sir, the reasons I would like to state are that the State has no part to play in creation of culture, customs, traditions, norms, practices and beliefs. Therefore, the State cannot regulate or set up laws that will govern the cultures and customs. True, there are customs and traditions that are repugnant, but we all know that culture is dynamic, culture evolves, so are traditions and practices and so on. But if we say that the State will start regulating culture, in other words, the State can set up culture of its own, because you have given them the power, but the State has no power to create culture, customs or traditions. This statement is so broad that it covers all customs for most people. In other words, the practice which might be undignified to women, one woman or the other, regardless, can be brought up to court and say, this is undignifying to me. So, I am saying this so that it can be removed. Unless the State can catalogue the customs and traditions that are repugnant, there is no way you can say, this is right and this is wrong. We have for instance, in Buganda here, women never used to eat chicken, eggs, *nisenene*, some fish species, now, they do, but the State did not come out and say, now women, you should eat and so on. The culture evolved to a point where that argument held no water. So, the women came out and said, we can do this and they started doing it.

Now, by putting this provision in the Constitution, we will be opening a door whereby everybody can come up and oppose the culture that you believe in simply because, either, he would like to destroy the culture by taking away what you believe in. I am not saying that I support some of these cultures that are repugnant - okay female circumcision is repugnant, but we can eliminate this through education, advocacy and other things, but not to sit there and say, the State will start regulating and say this is what should be done or others would not. Now, you can find in some cultures bride price is acceptable by some women and some women will feel incomplete if they are married without bride price, but others will say, this is undignified, it makes me into a cow which is going to be bought or bargained for. So, they might say, okay this is no good, they go to court so that this bride price can be removed. Now whose rights will you protect? The ones who are against this or the ones who want it? And in other cases, in Buganda here, men are supposed, by culture to kneel to the

King. Now, suppose I kneel to my king, and my wife being on the other side, will look at it and say, no, look the other women are laughing at me because my husband is kneeling to another man. So, I am going to go to court and petition and say this culture or this tradition must be thrown out. Supposing I like my wife to kneel to my father or to my mother, but she does not want to do it, then, she can go to court and sue me because this is undignifying to her. Therefore, the State will come out and say, okay, let us cut out this kneeling business because we do not want it any more, because it is undignifying to the women. Though, it might be undignifying, would the State be the one to say, this is undignifying? Now, the Bagisu have a custom of circumcision. Now, supposing - now we have these armies, I do not know how they call them, but they go out and grab the men who are not circumcised and cut off their thing, no question is asked. Now, supposing a woman is standing there, and she is the wife to the man and he is circumcised in the public. Now, the woman can go and sue and say this custom is repugnant, now, my dignity has been lowered because my husband has been circumcised in public. Now, will the State go out there and eliminate the Embalu? Now, this will make a lot of Bagisu very very disappointed. Now, some of us live in traditional religions. Now, supposing in these traditional religions, some women are made to do specific duties, that someone might look at and say, they are undignified. Now, does it mean that the State will come in and abolish the traditional religion that I believe in because some woman is saying that it is undignified? I think not.

Now, the State can regulate law - it can write or eliminate law, but culture, customs and traditions that are dynamic, that evolve over time. I do not think the State has a part to play in doing this.

Now, culture, customs, and practices, those are what make us different from other people as Africans in general and Ugandans in particular. Now, if the State comes up and starts poking at our culture, it says, this is good, you retain it, this is bad, let us throw it out. If we all had the same culture in Uganda, unfortunately, we do not, then we can sit down and catalogue what we think is repugnant within our culture. We can throw out what we do not want, and then go on with what we want. But, unfortunately, we are not. But what I am saying - what I would like to point out is, we can eliminate some of these cultures that we think are repugnant through education, through advocacy, through the NGO's because

I can point out to you now that, in cultures where circumcision for women is practiced, I do not think they are now circumcising the same number of women as they used to, because women are learning - people are learning and they are staying away from this culture that they think is repugnant. Now, if we set up - if there is say - *(Interruption)*

MS. EGUNYUASEMO (Women-Kumi): Point of order. Mr. Chairman, is it in order for the Hon. Member to move a Motion that is contrary to our Rules of Procedure and therefore, it is technically knocked out? Mr. Chairman, I wish to draw your attention to Rule 48, Clause 17 of our Rules which are on page 34 of the Rules of Procedure of the Constituent Assembly of the Republic of Uganda. Mr. Chairman, it goes as follows: *"No amendment shall be made which is inconsistent with any Article already agreed upon by the Assembly or any decision already come to by the Assembly and the Chairman may, at the time during the discussion of a proposed Amendment, withdraw it from the consideration of the Assembly, if in his or her opinion, the discussion has shown that the amendment contravenes the provisions of this sub-rule"*

Mr. Chairman, we have already passed Article 22, that customs that are inconsistent with any provision of the Constitution are void. We have passed Article 61(4), which says *"Customs which discriminate against women on grounds of sex should be outlawed"*. We have passed article 50(3), which says that, *"women and men shall be equal under the law in all spheres of political, social, economic and cultural life"*. Mr. Chairman, Sir, therefore, this Motion is incompetent according to our rules - *(Applause)* and I beg you to make a ruling.

THE CHAIRMAN: Should I be understanding the Hon. Member raising the point of order that in fact she is saying that, the present Clause 4 is irrelevant? Is that what you are saying, because you have fully covered it elsewhere?

MRS EGUNYU: Mr. Chairman, I am saying that, the amendment is irrelevant given that, we have already passed Article 22, Article 61(4) and Article 50(3). The amendment which is now being moved, and therefore, I am asking whether it is in order for him to proceed and at the same time begging your indulgence to invoke rule 48(17) to throw out that amendment.

THE CHAIRMAN: No. You see, you are saying that, we have already passed provisions more or less, in terms of - so, you are saying that, 4 is irrelevant? Otherwise, if it is not irrelevant, then it is open for discussion. And if it is open for discussion, a member can amend it. This is what I am driving at. But if you say it is irrelevant then, we cannot proceed. But if you say that it is relevant and it is there and it should be there in its present form, then it is open for discussion under our rules. And in our discussion, a Member can move an amendment to any provision which is available for discussion. I see the hand of the Chairman of the Legal and Drafting, what do you say to that?

MR. WACHA: Mr. Chairman, I just wanted to give information that, this particular amendment, I forgot yesterday, was rejected by the Legal and Drafting Committee after a thorough discussion. Having said that, in addition to what the Hon. Lady has said, that is adequately covered and indeed that it would be a misnomer to remove the word "culture", when in fact that is the main culprit. So we had objected it (*Applause*)

THE CHAIRMAN: We amended - we approved some provisions which gave right to enjoy culture and all the other rights - okay, equal status and culture. Now, (4) is saying that, those things that are repugnant are out-lawed or prohibited. He is advancing an argument that, it will be difficult for us to prohibit some cultures even if they are repugnant because culture is dynamic and therefore, they can change, and he gave the example of the chicken business - the chicken and fish and all that. So now, unless our argument is that because of the previous provisions we have said yes to, 4 as it stands is irrelevant. But if we are saying that it should stay, then a Member is free to discuss it including amending it. I do not think it is fair for us to say - and I have said this before - I do not think I would like to take Hon. Basoga's view that let us put his question and defeat it. I think the Member is entitled to move his case and if we disagree with it, we proceed and then we continue to pronounce ourselves on it. Could you please wind up.

MR. SEMAALA KIWANUKA: Thank you, very much, Mr. Chairman. In winding up, I would like to state that, even if culture might be good to some other people, I do not want the state to impose a culture on me that I disapprove of. For instance, if female circumcision has been regarded by a member or a

president who comes to power, a dictator for instance and he uses this clause to say, okay, all women in Uganda should be circumcised. I do not want my wife to be circumcised. I mean I do not want to loose one of the best - I mean the things that make my life easier. So, Mr. Chairman, in winding up, I will like to amend this Article by saying that, the words cultures, customs and traditions be deleted so that the State will remain only to amend or rather to set in place the laws that the State can be able to uphold. So, Mr. Chairman, I beg to move.

THE CHAIRMAN: Now, the question has been moved and I give the Floor to Hon. Urban Tibamanya.

MR. TIBAMANYA: (Kashari County): Thank you, very much, Mr. Chairman. I oppose the Motion on two simple grounds. One is that, this is a prohibition clause. It is only saying, if something is repugnant, then court should not recognise it as good law. It is only preventing, it is not enforcing, it is prohibition. The second one is that contrary to what the Hon. Member has said, courts play a big role in recognising cultures, in recognising that cultures can change and in fact they encourage the cultures to change. So, what he is saying is that the court should have no say about culture is misconceived. It is the best place where we can go and have some argument and recognise that culture is good or is bad. I thank you, Mr. Chairman.

MRS. KULANY (Women Kapchorwa): Thank you, Mr. Chairman. I stand to oppose the Motion. Mr. Chairman, I think the State has a right to protect its citizens, especially where cultures are harmful and oppressive. Mr. Chairman, the previous speaker has laboured so much on female circumcision. But medically, we have been informed that there is nothing good out of it. If anything, women actually have a lot of problems during delivery, and may be also during sexual intercourse. Therefore, I think, you find that, most of these people who practice these cultures, they do it in ignorance and I think it is the State to alert its citizens that, whatever they are doing is not correct. Therefore, I oppose that. Not only that, Mr. Chairman, this bride price, much as some people may value it, but we know it that most people use it to suppress women or enslave women. So, such cultures, Mr. Chairman, should be eradicated and it is the state to see that, they are not there. We have been trying to say that we want our rights, we want freedom. Now, if we remove such things, how shall we be free and have a right to do what we want? So, I oppose the Motion. Thank you, Mr. Chairman.

MR. OLEGA (Aringa County): Mr. Chairman. I would like to oppose the Motion on the Floor. Mr. Chairman, if the constitution we are about to make does not take into account our cultures and customs, or traditions, then we are not making a constitution which will resolve our problems. Uganda has had a series of constitutional instruments, many of which have failed to take into account or satisfy the national aspiration of the time. My understanding is that, a constitution will stand the test of time if it objectively promotes the interest of the community as a whole. Therefore, cultures and customs of the people of Uganda are pertinent to the making of this constitution. For this reason, I beg to oppose the Motion.

MRS. NTABGOBA (Women Kisoro): I stand to oppose the Motion. Mr. Chairman. The State has a right to protect his people, and because the cultures and traditions tend to interfere with the state regulations or rules, where culture is concerned, the state should have its own rules in the village set up. There is a case somewhere in South Africa where circumcision is practiced, any girl refusing to be circumcised, the villagers had the right to kill her. That one is working against the right to life and is not appreciated all over the world. Now, the Member who has moved this Motion should remember that, we are here to do away with the anomalies which were caused long ago. As today in Uganda and all over the world, we are no longer so primitive to know that, some of these cultures are out dated. That is why I appeal to this Member to take it with a good heart that, his amendment is really being tabled in a selfish manner. If I may use that word. Today, we are looking at individuals, the children you have in your home, the children you have in the country today and the children of your children. We are not thinking of the wife you are having today, or the sister you are having today. I think we should do away with those sentiments, and look at a constitution which will serve the future, when we are not there.

In our Draft Constitution, it puts it clearly that, "*the laws and cultures, customs and traditions which are against dignity, welfare or interest of women or which undermine their status are prohibited by this constitution*", and therefore Mr. Chairman, I am opposing the amendment very strongly. Because if we uphold the amendment, it will mean that, women and all those who come under the under privileged category will remain oppressed. Thank you, Mr. Chairman.

MAJ.ONDOGA: (NRA Delegate): Mr. Chairman, I see this debate continuing in a very confused manner. We are confusing culture, custom and tradition, talking as if they are one and the same thing. That is why we hear of cultures that are repugnant, oppressive or what have you. Cultures have never been oppressive, culture has never been repugnant, culture is the way we live. On the other hand, custom is the culture of yesterday, the culture of 100 - 200 years ago, and it is what holds the manner in which we live today. It is what presses us today. Now, what has been happening is that, people pick custom, pick tradition and they call it culture and use it to oppress society and it is true that, under that, a lot of our people have been oppressed, especially the women group. Therefore, it is to hiding behind reality when we move against, we move to support the Motion like this amendment which has just been moved and pretend that, culture is oppressive. Culture does not oppress, but there are customs in our society which oppress and which hold us back, and hold culture from developing. Culture, like someone said is, progressive, and for it to continue, we must prevent custom and traditions from holding it back. Therefore, Mr. Chairman, I oppose this amendment.

MR. NEKYON: Point of clarification. Mr. Chairman, I would like to get clarification from the Movers of the amendment. Their main argument is that since the State does not create culture or tradition and all this, it should not have anything to do with it. Now, could he tell me whether it was right or wrong for the State to abolish cannibalism, because some tribes in Uganda for instance, the Balega used to eat people. Should that culture have been left to continue until it died by itself or not? Secondly, we had a tradition where twins were killed immediately after they were born, for instance by the Kisi of Kenya. The mover was saying, that that tradition should have been left to go on - the moment twins are born they are slaughtered - until it dies out. Is that really what they are saying?

THE CHAIRMAN: Well, it was a contribution.

MR. MUKASA MURULI: (Nakasongola County): Thank you, very much, Mr. Chairman. Mr. Chairman, I beg to oppose this amendment simply because I find it a little bit restrictive. When we look at where this article is, it is about the rights of women. And the article itself talks about or

mentions those areas which are likely to bring down the dignity of women. It mentions laws, culture, customs or traditions. So, all these things, any of these can bring about the lowering of the dignity of women. So, it is not only laws. When the amendment talks only of laws, that are against dignity and welfare of women, then it leaves out some of these other areas which actually oppress women. On that ground, therefore, I oppose this amendment very strongly and I would request the House to oppose it too on such ground. Thank you, Mr. Chairman.

THE CHAIRMAN: Let us ask the consequence - Hon. Kezimbira.

DR. MIYINGO KEZIMBIRA: (Bukoto Mid West): Mr. Chairman, when I co-sponsored this Motion, we were put together but with different ideas. The idea I had Mr. Chairman, was of putting up an amendment on this article which in a way exactly like Hon. Egunvu raised on the Floor. I saw that this article was rendered useless in view of what we already have passed in Chapter One, Article 2 Clause (2). I thought it was just proper for us to have been guided by this clause which says, *"If any other law or any custom is inconsistent with any provision of this constitution, the constitution shall prevail and that other law or custom shall in the extent of inconsistency be void"*. So, I was not really saying that I would like the women to be oppressed by customs or cultures, but this is a repetition and unnecessary, already stated and well provided for. So, Mr. Chairman, my reason of moving the amendment was slightly different from hon. Semaala's.

At the same time, Mr. Chairman, I also thought that, probably when we bring this out again, it might lead to prejudice. Sometimes, some other customs which are good to certain communities are bad to others but my intentions were like that, Mr. Chairman. I thank you. I beg to move, in my own way, but withdraw from the mainstream of the motion. (Laughter)

THE CHAIRMAN: I think with that slight confusion, I suggest that, we pronounce ourselves on it. I think we do so. Well, I think the general idea is that we vote on this one. The Motion is clearly written and it appears as number 10 on our amending sheet - that *"Laws that are against the dignity and welfare or interest of women, which undermines their status are prohibited by this constitution"*. That is supposed to replace 4 as it stands now. I now put the question.

(Question put and negatived)

THE CHAIRMAN: So, the article remains as it is. Sorry, that particular Clause remains as it is. Now, we have referred part of the proposed amendment. There was an amendment by Hon. Rhoda Kalema to insert another provision in article 61 which is actually our article 62, so until we get that, we cannot put the final question on this article and so it stands over.

MR. WACHA: Mr. Chairman, you will recollect that we passed - we inserted the new clause - I mean article 61, which was proposed by Hon. Winnie Byanyima which brought into place a new Clause for affirmative action in respect to all groups of people. Now, there is still this clause 3 in 61 which deals, specifically, with affirmative action in respect of women. Now, I was wondering whether the Chair could direct us on what to do with this matter, whether it would not be repetitive in view of the already passed Article.

THE CHAIRMAN: I think we can consider that. What was said to be 61 - but we did agree that the Technical Committee can find a better home for it. Because there was a proposition that it would better appear as a general affirmative statement at the end of this respective rights of women, children and so on. Now, Hon. Ben Wacha is saying, in view of what is now 61, do we need 61 or rather 62(3) which reads *"Women shall have the right to affirmative action, for the purpose of redressing the imbalance created by history and traditional customs"*. In view of this one which says, *"The state shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or other reasons brought by history, tradition and custom, for the purpose of redressing the imbalances which exist against them"* and then we proceeded to set up an *"Equal Opportunities Commission"* under 2. Now, he does no harm to leave it there, but some Members are saying, do we need to repeat ourselves. I can hear from Hon. Elly Karuhanga.

MR. KARURANGA: Mr. Chairman, this deletion would be a consequential amendment or deletion and cleaning up our act. It is very dangerous to leave two statements which mean the same thing in the constitution. A stubborn judge confronted with the two, would find one word missing in another and give it a totally different interpretation. So, I think we move to the amendment by Hon. Byanyima. It is good.

enough, it covers this adequately. it picks all the important words from there and uses it. So, I move that, as a consequential amendment, we delete (3). I beg to move.

MRS. MWESIGYE: Thank you very much, Mr Chairman. May be at this stage, I should also mention that, I had moved a similar amendment like Hon. Winnie Byanyima's, but I had wanted it to come as an independent Article 64. And simply because it was actually fearing that if it came first, then there would be a danger of the House misunderstanding this very, very important and specific provision providing for affirmative action for women.

Mr. Chairman, the amendment that has been effected - Hon. Byanyima's amendment - talks of discrimination on the basis of gender. As we are all aware, gender means the relationship between the man and the woman. And I will argue that as women specifically, although they are included in the gender, but women as a specific group has suffered the imbalances caused by tradition, by custom and all these other factors. And therefore, they are suffering, they are disadvantaged in my opinion and in opinion of so many other people. This should be look at specifically, so that, although we have passed this general provision, since this is a Chapter talking about women's rights, we could also specifically talk about the affirmative action for women. Because even when you look at all these other categories of the disadvantaged, if you take the disabled, you will find that, a disabled woman is more disadvantaged than a disabled man. If you take the minority, it is still the same thing. So that the disadvantage of a woman involves all the social, economic and political strata and in my opinion, we should retain this Article for purposes of emphasis, for a group that has suffered much more than the rest of the disadvantaged groups. I thank you, Mr. Chairman.

THE CHAIRMAN: I think what we should do here is that, for the time being, let us leave it as it is. And then if, in due course, in the consideration stage, we think that there are some areas that need to be revisited, I think we can do it that way. Otherwise, we shall open debate for and against - that would take such a long time that we loose time. I think let us just leave it as it is, and then come and look at it in case there are any conflicts or likely chance of judges saying that, there is a difference between (3) and what we approved. Because that also, there is that danger. You can find some future judge saying, it was a clear

intention of the Constituent Assembly that Clause (3) should be different from the general. But that one, we can come to it later on. I think we leave it as it is. I think we have finished that one.

Hon. Wanendeya, let us go on to the next one. There is yet article 61 Clause (4), this very one we have been talking about. It is an attempt to delete the word "welfare" and insert the word "well being". Do you really want to pursue that? Do you want to pursue this amendment to delete the word "welfare" and insert the word "well being"? I think the movers have abandoned their intentions.

Now, there is one on 62. We now move to 62 - 61 we shall come to pronounce ourselves on it after we have disposed of the proposed amendment by Hon. Rhoda Kalema. We come to 62.

MISS. NANKABIRWA (Women, Kiboga): I would like to attract your attention to amendment No. 15 which is on Article 61 in the Draft and I wanted to say something about it, page 5.

THE CHAIRMAN: Oh, there was another amendment on that one? Is this the one where we were told it was being moved notwithstanding advice. Well, the Hon. Member insisted on her right to come and present this matter seeking to insert another clause on Article 61.

MISS. NANKABIRWA: Thank you, very much, Mr. Chairman. As the Chairman for Legal and Drafting Committee told you, this is one of the amendments which were objected. But, Mr. Chairman, the reason which I was given, I was not yet convinced. They told me that it is well catered for in the Prisons Act. I am very much aware of this Prisons Act and the Police Act recently passed in Parliament. But Mr. Chairman, the effectiveness of these Acts, goes with a very big question mark. So, Mr. Chairman, I became so much concerned about these women in custody, after a very close observation and research on such women generally, but more specifically in third world districts. Mr. Chairman, the Prisons Act needs re-enforcement because sincerely, these women's lives are currently at a risk in these third world districts.

THE CHAIRMAN: But are you seconded in your Motion? Is Hon. Nsamu seconding?

MISS.NANKABIRWA: Mr. Chairman, I wish you could give me time and conclude. Because -
(Interruption)-

THE CHAIRMAN: But you see, your Motion must be properly moved before us, and you were going now to give reasons. But I did not see the seconder unless Dr.Nakyanzi has agreed. It is seconded by Hon. Wanendeya and many others.

MISS.NANKABIRWA: I thought Mr. Chairman, that, it will be a re-enforcement if this particular amendment is entrenched in the Constitution, because women are also vulnerable like the children and there is an amendment similar to this in Article 62 Clause 6, which is talking about juvenile children being kept separate from the adult offenders. However, Mr. Chairman, I would like to inform the House that, from what happened from the time I submitted this amendment to the Legal and Drafting committee and now, I beg to withdraw this amendment, but I am urging Hon. Delegates, the political leaders, the NRC Members who pass laws to follow them up and you know, evaluate their effectiveness. Because sometimes, these laws are really dormant and people suffer. I beg to withdraw, Mr. Chairman.

THE CHAIRMAN: And since it has been withdrawn, the seconder cannot make any comment. There is no Motion on the Floor to debate. Now, we go to 62. There is a number of amendments on 62, and some of them came in this morning. Now, can I get guidance from the Legal and Drafting Committee? This number 17 appears on this sheet. There is a first amendment on Clause (3) of 62, by Hon. Mazima. Please move your amendment.

MR. MAZIMA(NUDIPU): Thank you, Mr. Chairman. Mr. Chairman, I am told that, there is item No. 12.

THE CHAIRMAN: Can we get clarification from the Legal and Drafting Committee on the sequence of events? I see here, on today's distributed amending arrangement, we have No. 17 - No. 18, and then I can see that, we also have earlier amendments: No. 12, No. 13, No. 14.

MR. WACHA: Thank you, Mr. Chairman. I think the confusion arose because of our holding No. 16 this morning. But the sequence should have been a follow-up of the papers as they were given out yesterday from which we should now continue with number 12, 13, 14, 15 came in between because it

was also brought in later yesterday. But the sequence should be 12, 13, 14.

THE CHAIRMAN: Because, when I saw 15, I thought we had come to the end.

MR. WACHA: Sorry, we are now going to 62. 15 was just an insertion it should not have been there.

THE CHAIRMAN: I think that is what caused confusion. There was 61 and 15 in the middle, and my logical understanding was that we go on to the next which was 17 since 16 had been changed already. Okay, now that being so, we go back to No. 12 and we ask Hon. Fiona Egunyru to move an amendment, and then that will be followed by another and so on and so forth.

MISS. EGUNYU(Kumi District): Mr. Chairman, I beg to move that, Article 62 be amended by inserting a new Clause (1), in the following terms:
"A child is a person below 18 years of age"

THE CHAIRMAN: Is that seconded?

MISS. EGUNYU: Yes.

THE CHAIRMAN: Yes! it is seconded, by the Eastern Youth.

MISS. EGUNYU: Mr. Chairman, the amendment intends to set a uniform age definition of who should be considered a child, and to distinguish between the child and the adult. Mr. Chairman, the distinction between child and adult is vital for determining social relations, obligations, duties and legal status. A clear definition of a child would guide legislators and policy makers to address child welfare needs in development planning and legislation.

Mr. Chairman, the various statutes relating to child welfare do not give a uniform age of who is considered a child. The terminologies used to refer to child varies from minor, juvenile, young person to child. For example, under the approved School Act, a child is a person under the age of 12 years. A juvenile is a person who has attained 7 years of age, but is below 16 years. On issues of maintenance, a child is also disadvantaged because of these disparities.

In divorce settlement, a father is legally obliged to provide maintenance for boys below 15 years of age and a girl below 13 years of age. Because those

categories of children are the ones considered to be minors under that divorce law. Under the Affiliation Act, the putative father of a child born out of Lawful marriage that is to say, children referred to as illegitimate, the father of such a child is not obliged to maintain a child once he becomes 16 years of age. This is because the maintenance order automatically terminates once a child is 16 years of age.

Mr. Chairman, at 15 or 16 years of age, a child still needs maintenance and assistance for education. As indicated above, in the marriage and divorce laws, the age at which the girl is considered a child varies from that of a boy. Hence the Penal Code Amendment Statute punishes as defilement, sexual intercourse with a girl under 18 years of age, while at the same time, the Customary Marriages Decree legalises defilement of a 16 year girl child in the realm of marriage. Mr. Chairman, child marriages are, to a large extent, responsible for the early withdrawal of girls from schools. A fact that explains the high illiteracy rates and constrains the women's participation in development.

Mr. Chairman, the present age disparity as to who is a child is discriminatory. It has also resulted in lack of uniformity and inequality in the administration of justice to the child. I say this because rights and the legal rights of a child and the duties and obligations to which a child is entitled have been categorised according to age brackets. This shows us that, at the time the various laws on child welfare were passed, there was lack of a consistent policy to guide legislators. And I believe that, it would be wise not to repeat the same mistake.

Mr. Chairman, the recommendation that a child is a person or should be a person below 18 years of age, takes into consideration the development of mental and physical characteristics that define maturity and distinguish the child from adults. It also takes into account the fact that, the youth statute has already defined the youth as persons of 18 years and above. Hence, the need to define and determine the legal status of persons below 18 years of age.

Mr. Chairman, the amendment adopts the definition of a child in the UN Charter on the Rights of a Child and the OAU Charter on Rights and Welfare of the child that Uganda ratified and is duty bound to implement. Mr. Chairman, the constitution of other African countries for example Ghana, have defined a child as a person below 18 years. I would like to point out that we share the same background with

most of these African countries, and we should take an example or a leaf out of what Ghana has done. Mr. Chairman, with those few remarks, I beg to move

THE CHAIRMAN: Let us get information from the Legal and Drafting Committee. Any of the two Members sitted next to each other there.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. The Legal and Drafting Committee had a difficulty with this amendment for a number of reasons, while it is clear that, we can define who is an adult by reference to 18 years, our laws - criminal laws, juvenile offenders - institutions and so forth have different degrees of who is a child for purposes of what? For example, under our law, a child, I think, under the age of 10 years is presumed to be capable of committing an offence. But in some other respects, juveniles who commit offenses, are triable and can of course be punished in different laws. Secondly, there is capacity to contract. Obviously, while a child under the age of 10 years may not contract, but it is acceptable that, a young person of the age of 16 years, 17 years can make contracts with adults. But, then there is a law of evidence which again, categorises these persons, those who can be compellable as competent witnesses. While others are not. If we blanket all these young persons as a child, then we are going to have difficulty in interpreting these laws. So, the legal and drafting committee views are that, let us define who is an adult, and let the children to be defined in their different contexts by these laws that I have tried to enumerate. I thank you Sir.

CAPT. BABU: Mr. Chairman, in Aviation Law, there is a clear cut on these definitions. A child is anybody below two years of age - a baby sorry. And a child is below the age of 12 years. And anybody above that falls into a different category. I wanted us to be very, very careful here that, when we get to the definition of this, we must also look at the custody. If we get a clear cut age of 18 years and there is a dissolution of marriage, there is gona be very difficult case for custody here for some groups of people. I think we should be very clear, and I think the intention of this amendment has to do with custody. I want us to be very careful that if we raise the age, then the fathers might have a problem, a very big problem before the age of 18 years to get some sort of custody of these children. So, I would like us to be a little be careful and be very clear on the age and that, a child, internationally, it is accepted that they are

below 12 years or 13 years, and that, they become youth up to the age of 18 years and then 21 years. I would like us to use this. Thank you very much.

THE CHAIRMAN: Who is seeking clarification? Well, let us get Hon. Chepsikor first of all. He seconded the Motion.

MR. CHEPSIKOR: (Youth Eastern Region): Mr. Chairman, the said Article deals with the maintenance and care of the child and not criminal liability. So, Hon. Kanyeihamba should not worry. We are after care and maintenance of the child, that is the clarification I am giving, Mr. Chairman. Thank you.

THE CHAIRMAN: Can I get clarification from the Mover? Was it intended that you delete 5, or that is only for Clause 4? Because you are saying, for purposes of the article, and yet there is also 5.

MISS. EGUNYU: Mr. Chairman, one of the seconders of the Motion is Hon. Kigyenvi, who thought to actually amend Article 5 by substituting 18 years for 16 years. But the general principle behind the amendment was that, children below 18 years of age still need the care and maintenance from the parent. And if you look at the provisions of article 62 (1), it talks of the rights of children. But it is specifically talking of education, Medical treatment, maintenance, is restricted to care as opposed to criminal liability that Hon. Kanyeihamba was worried about. It does not even go into the details of marriage that other delegates here are worried about.

THE CHAIRMAN: But the point I am making is: you are restricting your amendment to insert in the definition for the purposes of the article, but within the article, there is also a provision narrowing down with regard to 4. For purposes of clause 4, the age is under 16 years. Do you want to move also an amendment to that?

MISS. EGUNYU: Mr. Chairman, there are two positions which could be taken on this. One is that, article 5 be treated as an exception to the general rule that is one way of looking at it. The other is to amend article 5 or to delete article 5, as proposed by Hon. Kigyenvi.

THE CHAIRMAN: But then, what you could have done, to retain 5 you would have said, "*a child for the purposes of this article but subject to 5*". then the rest runs logically.

MR. MULENGA: (Democratic Party): Thank you, Mr. Chairman. Mr. Chairman, I do not see why the mover is suddenly uneasy. It is obvious that the two cannot co-exist. So, I think we should come out and state categorically that, No.5 or clause 5 should be deleted. Secondly, Mr. Chairman, it is my humble view that the intention of defining the age of a child is quite appropriate namely; we are setting out the rights of the child, we should know who is covered by the chapter. And that is why, in the Draft, there was a need to have clause 5: to say who is a child. A child is 16 years. Hon. Egunyu is feeling that, 18 years is better than 16 years, it is more logical, I tend to agree with her. As for the points raised by Hon. Kanyeihamba, I think, with due respect, it is not correct that, we should avoid defining a child in the constitution because different laws have made provisions for different ages. The correct position is that, for these rights in the constitution, a child is one under 18 years. But every other law can stipulate at what level is a child responsible for its act. Thus the Penal Code says, below 10 years, you do not have responsibility to be liable for crime. Then also for approved schools, we provide different ages. But that is all under the age of 18 years and under that age, the general name is 'a child'. So, Mr. Chairman, I am supporting this amendment.

THE CHAIRMAN: Now, let us get the position clear.

MR. MULENGA: Consequentially, No. 5 would go - should be deleted. I think they both omitted - with due respect - both the mover and the legal committee which advised had not seen clause 5.

THE CHAIRMAN: I can see Hon. Katureebe. Would you like to defend your position through the Chair rather than carrying an altercation? Okay, I give you the Floor to indicate to us whether you had knowledge of the existence -

MR. KATUREEBE: Thank you, Mr. Chairman. There is no doubt that we had knowledge of the existence of clause 5 and indeed we talked about it. Clause 5 is specifically talking about the protection of children from exploitation. It is talking about employment, it is a specific thing. Whereas what Hon. Egunyu is trying to move is supposed to be general, for purposes of the rights being given to children generally. So, there is no question of Clause 5 being deleted because it has a specific thing that it is aiming itself at and we looked at it. As far as I can

remember, the problem we had with Hon. Fiona was where to put her amendment? Whether when you look at an article, and before you have even talked of what the subject is, you start by a definition. On whether the definition could come towards the end when you have talked about the rights and then you end up defining who are the people entitled to the rights. But certainly, clause 5 is a distinct concept which is aiming at a different thing.

THE CHAIRMAN: If it is intended that 5 should be kept, then I think it would be better if this amendment came first, but with the words "*Subject to clause 5, a child for purposes of this...*" - otherwise, it will be quite confusing really. No, let us not begin putting questions before we know what we are voting on. Hon. Kavuma you want to clarify on that one? Let us first of all agree on what the text is, and then we can debate it from that position.

MR. KAVUMA: Point of clarification. Thank you, Mr. Chairman. In view of the arguments we have had which are very, very reasonable and convincing, I want to request the mover of the Motion to accept subjecting her amendment to the provisions of sub-clause 5, then I think we should have come out with the law which takes care of the situation which Hon. Kanyeihamba was worried about as explained by Hon. Mulenga and we shall have covered the mover's interests and we shall have protected children who may not be 18 years - okay, children under 16 - from exploitation which I think is a good policy. So, I wish to request Hon. Egunyuu to accept subjecting her amendment to the provisions of sub-clause 5. I thank you Sir.

THE CHAIRMAN: Hon. Egunyuu, let us agree on the text first, then we go to the merits.

MISS. EGUNYUU: Mr. Chairman, I would rather that we maintain the original amendment that a child is a person below 18 years. Because the employment decree provides for children under 16 years of age - protects the children of under 16 years of age from economic exploitation. Likewise does the Penal Code set the age of penal liability for children. So, article 5 should not really condition us because it is already handled under the employment decree in as much as child liability is handled by the Penal Code.

THE CHAIRMAN: No, Hon. Egunyuu, I think you are not going with us. You realise that, the way you have written your amendment - you are saying, "A

child for the purposes of this article..." and the article has got - it is for the whole of 62 up to 7. Now, you are creating an internal conflict within that article between your definition and 5. And what we are saying is, either we delete 5 and we say, "*Children of 17 years should not work...*" or we say, "*These rights are available to children...*" But for purposes of exploitation of labour, we now come down to 16 years. In which case you would open your amendment by saying, "*Subject to clause 5, a child for the purposes of this article is a person below the age of 18 years*". Then we know that, for purposes of exploitation of child labour, the Constitution prohibits and limits it to 16 years. That is now, I think what is being suggested.

MISS. EGUNYUU: Mr. Chairman, I concede.

THE CHAIRMAN: So, now the text I think is settled for purposes of our merits. Should we vote? I now put the question.

(Question put and agreed to)

THE CHAIRMAN: Article 62 has also attracted amendment in Clause (2) by a group of Members headed by Hon. Onegi Obel, Hon. John Mialiro, Hon. Elphaz Mazuma, Hon. Basalize, Hon. Okeny Atwoma, Hon. Kagimu Kiwanuka, Hon. Fiona Egunyuu and Hon. Janet Mukwaya. I will ask Hon. Onegi Obel to lead the discussion. Before you start, there is an issue raised on a point - there is an issue raised on a question of procedure.

MR. MUSHEMEZA (Sheema South): I seek your guidance on procedure. It is now about 14 minutes to 2.00 p.m. since we are supposed to come back for the afternoon session, today is Friday, am I correct? And since we are supposed to come back in the afternoon, I thought we would go for lunch and come back. I seek your guidance on this Mr. Chairman.

THE CHAIRMAN: Well, you see, yesterday, the Chair was not aware that we had these many other amendments. They were being prepared, now they have come to hand. That is why yesterday I had suggested that, if we went through what we had with us yesterday, then we would give way to the Legal and Drafting Committee to meet so, that they can process over the weekend those amendments that we may need to look at next week. We have now still with us a number of amendments. Now, the Legal

and Drafting Committee we have enough work now for us to go on and seek guidance. The Legal and Drafting Committee, do we have enough work now for us to go on? I seek guidance from the Chairman or Member of the Legal and Drafting Committee. Hon. Ben Wacha, what do you suggest?

MR. BEN WACHA: Mr. Chairman, it is our opinion that we need some adequate time to organize enough Amendments for Monday and subsequent days for the House to move on. I think it is still necessary, with your permission, that we do some few Amendments within the time that you have allotted and you give us the afternoon to work with some amount of breathing space. We are working under very, very, big stress. Mr. Chairman.

THE CHAIRMAN: Now, can I suggest that we push on a bit more and complete some of these and then we give the Legal and Drafting Committee some time because some of the Members also have sponsored the Amendments and they would want to go and meet the committee so that we sort out a lot of work for next week and then the Technical Committee can be drafting over the weekend because the problem has been that we have been meeting and then having to lose the whole morning because the Legal Committee and the Technical Committee are not ready. But if they met on Friday today, then the Technical committee can be drafting the agreed texts, to be available to us on Monday morning and we proceed with a lot of work on our plate. So, I suggest we continue with Hon. Onegi Obel and then we go on to the other small Amendments and we see how we proceed from there.

MR. ONEGI OBEL (Jonam County): Thank you Mr. Chairman. Mr. Chairman, Hon. delegates will appreciate that this Amendment is actually a compromise in recognition of two very difficult positions. The sponsors of this Amendments, no doubt, accept that every child in this country should get at least a Primary education, but if we make that education compulsory, Mr. Chairman, then, the argument is that, it must be free. Hon. Delegates, there are parents out there who are genuinely unable to send their children to school and the call for compulsory Primary education will definitely suggest that their parents be prosecuted even when they genuinely cannot send their children to school

On the other hand, Mr. Chairman, the sponsors of this Amendment appreciate that the strength of the

Ugandan economy today is not capable of providing a free Primary education, even if we wanted to do so. This is being realist, Mr. Chairman. Hence the compromise that seeks to put that responsibility on both the parents and the State. It is possible, Mr. Chairman, that this can be argued as being the status quo, that the State is already aiding parents, through grants, to enable children in Primary section or even in the Secondary section to go to school. But, the advantage and the strength of this Amendment is to avoid relying on the sympathy of the State to give subsidy or not to give. It will make it an obligation on the State to give that assistance while at the same time encouraging the parent as opposed to obligating the parent through compulsion to say, alright the State is helping me, so, I must also do my best and see that the child goes to school.

Mr. Chairman, methodology, I believe, I am not a lawyer, is administrative. Mr. Chairman, I beg to move.

THE CHAIRMAN: Thank you Onegi Obel. It was seconded I think. Yes, do you want to make a contribution on that?

MR. KAYIZZI ASANASIO (Kassanda North): Thank you very much, Mr. Chairman. I beg to support the Motion as brought by Hon. Obel Onegi because it is very difficult to institute compulsory education in Uganda which is very well known that it will be very difficult to enforce. It is the monetary terms which determines the needs of an individual which we cannot be made compulsory unless they are ready to assist. Therefore, Mr. Chairman, let both parties be responsible for the child to attain basic education, and lastly with your indulgence, I beg to move without notice, that we insert a new Clause (3), that *"The State shall take appropriate measures to afford every child equal opportunity to attain the highest education standard possible"* I beg to move.

THE CHAIRMAN: No, that is a different proposition. We are still debating the Motion of Hon. Onegi Obel. Let us hear from - you want to propose an Amendment?

MR. MULASANYI DAVID (Rubanda County West): Mr. Chairman, I want to move an Amendment to the proposed Amendment to read that: *"A child is entitled to basic education which shall be the responsibility of the State"*. Mr. Chairman, I am seeking - (Interruption)

THE CHAIRMAN: Is that seconded? It has been seconded by Hon. Sabiti and others. Now, the Motion of Hon. Onegi Obel has been - there is a proposition to amend it by deleting the words "*and the parents of the child*", that is what really the amendment is all about. By deleting the words "*the parents of the child*" and placing a full stop after the word "*state*" and that is what has been moved. Can we hear about that first?

PROF. KABWEGYERE (Igara County West): Thank you, Mr. Chairman. I oppose the Amendment. I do not think there is anywhere in the world where the parents have nothing to do with the education of their children, even in the so-called developed countries, the parents do a lot of input into the education of the children. If you look at Uganda, much as we are aspiring to high levels of economic growth, I do not see ourselves in the next 50 years even, effectively providing education for all. So, I think this is only deceiving ourselves. Sometimes these Amendments must avoid the kind of populism because we really we do not want to deceive the -
(*Interruption*)

THE CHAIRMAN: I do not think you should impute improper motives on the part of Members who have genuinely moved their Motion; that they are doing so for popularized reasons.

PROF. KABWEGYERE: Mr. Chairman, what I am saying, I am not saying that this is intended, but it can appear - you can raise the hopes of the population that after the Constitution has been passed, everything will - Uganda will start becoming a land of honey and gold and that can be very deceptive. I thank you.

THE CHAIRMAN: Hon. Bagená - we are properly on the Floor, we are discussing an Amendment of the Amendment.

MR. BAGENA (Bufumbira County East): Thank you, Mr. Chairman. This education right of children is extremely important and while I would like to support those who moved the Motion, I think the Amendment is going away from the spirit of the Article which they are intending to amend. Where I have been, the people who sent me are actually very clear about how they would like their children to be educated at any cost.

Here, we start bringing in the idea of the Government not being able to support free, compulsory educa-

tion, but I think we are just kidding ourselves because, ultimately, the Government, the State of which we are members will have to take decision on this. We cannot hope to reach the welfare of our people when we do not give education priority. I am saying that the spirit of the movers certainly should reflect the opinions and will of the people which has been Primary education should be a right to all children of Primary going age and should be provided by the State. So, whether you amend this by just stopping at State, you are not saying enough. When you say someone has a right, there is no enforcement. Who do you take to Court for not providing the education?

In that connection, Mr. Chairman, there is an Amendment which I thought beautifully reflected the will of the people in the village which unfortunately has not been incorporated in the papers and that was the Amendment by Hon. Kirunda Kivejinja, which states and I would really - (*Interruption*)

THE CHAIRMAN: I do not think we should go in to begin sponsoring other Amendments where we have a definite Amendment on the Floor.

MR. BAGENA: Okay, Mr. Chairman, then, I would like to support the Amendment on condition that we cannot take away the responsibility of the State to take the lead in educating the people.

THE CHAIRMAN: Let us get the Mover of the Amendment.

MR. MULASANYI (Rubanda West): I have reasons for this proposed Amendment. Mr. Chairman, when the people submitted their views to the Constitutional Commission, about this subject, they had in mind free education. I am reading from the submissions from my Constituency "*Children shall be given free and compulsory Primary education*" and we are talking about Primary education. I had the feeling that this is what basic education means. The Odoki Report says in the memoranda, "*there is a general consensus that the educational system should be so designed that it is available to all Ugandans*". Mr. Chairman, to make education available to all Ugandans, you have to make it free. Mr. Chairman, because of these recommendations, the Commission went ahead and put the Clause in that form hoping that we shall see the impracticability of compulsory education without the word "free". So, they expected us to insert the missing word, "free". Mr. Chairman, if we sit here and frustrate

the interests of the people who voted us, it will be very unfortunate.

Mr. Chairman, recently, when the President was presiding over a Graduation Ceremony at the ITEK, he mentioned something to that effect and even asked the institution to start training the necessary manpower to prepare for that kind of education - free education. So, you can see that there is some willingness on the side of the State, but we are trying to outwit our selves in this field. Mr. Chairman, the justification for cost-sharing in tertiary education has been to save money for the purpose of running Primary education which is very cheap - much cheaper than running the tertiary education

Mr. Chairman, there is urgent need to reduce illiteracy in the country. What do we do to achieve this? It requires free education because to me, we have seen parents who are happy and willing to put their children to school, but they cannot afford the fees for 15, 20 children. While Primary school is still costly, parents will not be able to educate their children and normally, it is the society which suffers from this kind of negligence to our members.

THE CHAIRMAN: Hon. Member, you better wind up your remarks.

MR. MULASANYI: Mr. Chairman, it is possible for Uganda to do that, to run free Primary Education because Tanzania, our neighbour, which is no richer than Uganda has done it. We only need to create the will and the way will be there. Thank you, Mr. Chairman.

THE CHAIRMAN: I think let us vote on this Amendment, then we can debate the Motion as moved by Hon. Onegi Obel. There are two Motions here. There is the original Motion by Hon. Onegi Obel, the text of which you have, there is an Amendment proposed by Hon. Mulasanyi to confine the wording by deleting the Clause that refers to the parents and leave it to the State. Now, let us dispose of that Amendment first, if it carries, then there is no need to continue with the Motion of Hon. Onegi Obel.

MR. JACK SABIITI (Rukiga County): Mr. Chairman, this is a very, very important Motion and I therefore request that we adhere to Rule 48, Section 8, to allow Members to exhaustively discuss this issue since the Amendment has been presented, we

should not rush just to put a question. We should be allowed to explain why we feel education should be free.

THE CHAIRMAN: Are you suggesting that I put that to the vote? As you can see, it is not the general feeling. I think it would have been better if Hon. Sabiiti said that he feels strongly about the matter and he feels and he would like to make a contribution rather than saying the entire House should debate the matter. No, let us give Hon. Sabiiti a chance to make his observations. I think that would have been a better way of putting it.

MR. SABIITI (Rukiga County): I fully support the Amendment submitted by Hon. Mulasanyi that the State should shoulder the responsibility of Primary education and I would like to present my case as follows. It is high time that we gave education its rightful role in this developing Uganda. We cannot assume that we shall have good doctors, good engineers, good well trained people, unless the State injects reasonable funds to the basic education which is Primary education. Clever children, who would be better doctors, better engineers better lawyers, cannot have access to education because our people are very poor. I therefore fully feel that the State, which really needs the future human resource should take care of it initially - that is from Primary One to Primary Six. For example, many people argue that there is no much money that can fund this particular institution, but I would like to argue that if we did a reasonable, financial, engineering in the budgeting system of this country, enough funds would be shifted from various Ministries, various departments to educational system and this would certainly fund the Primary education.

I therefore feel, Mr. Chairman, that we should analyse individual Ministry Budgets to take care of the educational sector. I therefore support that the State should take over the Primary education. Thank you very much.

COL. PECOS KUTESA (Kabula County): Thank you, Mr. Chairman. I also stand to support what the Hon. Speaker has been talking about. I think the State can afford, if we were to think about it because I think there are three or four basic things we need for Primary education. It is the building, the scholastic materials and the teachers welfare. There are others, but I mean those are the basic. Now, we can afford to clothe, feed and house a soldier, why

can't we do it for primary teachers? - (Applause) On top of that, I do not think scholastic materials are more expensive than other things. - (Applause) - In my view, if we were to give priorities, of what is needed for this primary education we could afford it.

MR. AMANYA MUSHEGA: Point of information. Thank you Mr. Chairman, for trying to prejudice my information. But I will make my contribution later. I wanted to inform Hon. Col. Pecos Kuteesa, he is already aware, one of the reasons there is reduction in the force - in the army, is that their budget is not sufficient. - (Applause)

COL. PECOS KUTESA: I am aware but at least, there was something to reduce from. But I do not think if we were - we had taken care and put this education because as someone said, I do not think Tanzania is much richer than us. And it is because we are not - this thing was not worked out, but in future if we put it in place, I think we can afford - the government can afford.

LT. COL. GUMA FRANK: Point of information. Thank you very much, Mr. Chairman. I would like to inform Hon. Kutesa that, this so-called free education most people are talking about in Tanzania is in fact, they pay more than we pay here in form of taxes. I am a neighbour and I schooled there and in fact today, their children are being brought here in Uganda schools where they can pay less. Thank you.

COL. KUTESA: That one, I am aware if we can tax enough to run the army and other things, I think the same taxes can be used for education. (Applause) On top of that, those government schools cannot be equal, of course, to Kampala Parents or others. But let us have some of these schools, then those who are rich like Col. Guma and others can take their children to bigger schools - bigger private schools. But let the common man's child also be able to read and write. Thank you very much, Mr. Chairman.

MR. LANGOYA (Lamwo County): Mr. Chairman, I support the motion that the State takes over the responsibility for the basic primary education. Our problem now is that we are debating Chapter Five when we should have debated Chapter 3 so that it can help us in decision-making. In Article 27 of Chapter 3, there is already a statement that "The State shall provide compulsory education and then promote compulsory education". What I want to put across is that let us not look at implementing

compulsory education now. We should aim at putting it in the law so that implementation can be done later. We should not prohibit compulsory education because we cannot afford it. Thank you.

MR. ELYAU (Kalaki County): Thank you Mr. Chairman. I also stand to support because we are making for the future Mr. Chairman. If we are planning to fight ignorance, we must accept responsibility totally. This war has been declared since independence and nobody has won it. It is only up to the government to plan seriously so that from Primary One up to Primary Eight at least, government should take over class requirements: books and so on, while the balance or idea of putting on uniform, feeding the children, this is not a very important budget. Let us calculate how much we can really do when we are fighting. If we would leave wars in Uganda now and the money would be planned to educating our children, it would be better. I would appeal to people to see this thing very seriously that there are people who cannot even buy their own food to eat and how do you expect them to send their children to school. So these children should be protected. There are clever children in the village who are left to rot. Thank you Mr. Chairman.

MR. MUSUMBA (Buzaya County): Thank you Mr. Chairman. First of all, I have a problem on procedure Mr. Chairman and I seek your clarification. Sometime ago in my pigeon hole, I found amendments to the Draft Constitution written by the Hon. A.M. Kirunda Kivejinja. This booklet here includes amendments to the Articles that we are discussing now and some which we have already discussed. He is not here to present his amendments. What is the status of this particular amendment? Considering especially that one, we have been considering amendments of people who have not been here in this Assembly. Two, all amendments are going through the Legal and Drafting Committee. I do not know whether this one in particular has gone through that committee.

THE CHAIRMAN: I understand the Hon. Member is not in the country. What he should have done would have been to organise another Member to discuss these proposed amendments with the Legal and Drafting Committee. That having not been the case, it is difficult for us to assume that we should include amendments merely because they have been circulated.

MRS. JANET MUKWAYA: Thank you Mr. Chairman. I presented Hon. Kirunda - he requested me to present it to the Legal and Drafting Committee. That is why my name appears here, they amalgamated.

THE CHAIRMAN: Before they took into account that?

MRS. MUKWAYA: Yes.

THE CHAIRMAN: Okay, thank you for that clarification. Now you said you are going to make a contribution after you have got clarification which you have now.

MR. MUSUMBA: Thank you very much Mr. Chairman. Mr. Chairman, my contribution is very simple. In terms of the motion, I am of the view that we have to appreciate that we may not, as a country, afford compulsory education today, but at the same time, we have to put in place both the mechanism, the law and the spirit to ensure that we at least move towards free education and when you say free, then considering the poverty of our people, you have to talk about compulsory education. It is my view that we could examine the proposed amendments with a view to a gradual arrival at that goal by, maybe saying that first, the State should consider free and compulsory education for the girls and then in a few years, the boys as well.

Mr. Chairman, I believe very well that giving the girls an opportunity to go to school - we may not afford both the girls and boys at the same time but I believe that the State, if it applied its mind to this particular problem, we could afford to take the girls who are the mothers of this nation to school. Thank you very much Mr. Chairman.

MR. PETER AKURE: Thank you Mr. Chairman. Mr. Chairman, where the word "*compulsory*" appears, it could automatically include free education. Mr. Chairman, I happen to be one of those fellows who was taken by the chiefs by force to school. When I was taken to school, my parents abandoned me and said, it was not our will to have taken you to school. So therefore, the State must be responsible for school fees. Mr. Chairman, it had been a problem when we have been discussing during our general debate, some people were questioning across that you Karimojong, how much do you collect as far as your taxes are concerned? But

I indeed explained to this House the reasons why we are not able to collect the taxes. Mr. Chairman, this education now, to me, we are losing so many people if we do not protect them right when they begin - primary one because if we do not expose them to education that time, it means therefore, we are going to lock out very many capable people who could have been educated. And Mr. Chairman, I would want to be clarified again of the contribution to know whether some of this money for cost-sharing goes to primary education. Mr. Chairman -

THE CHAIRMAN: I think that is the question in Parliament rather than here.

MR. AKURE: Mr. Chairman, I am still on the Floor, I have not finished. Mr. Chairman, I support the idea of compulsory and free education so that we have these children exposed to education system in this country. Thank you.

MR. ODUR: Thank you Mr. Chairman. Mr. Chairman, I support the motion. I would like the State to try to use some of the money which has been saved as a result of the peace dividends to be used in free education. If you do not use this money in free education, it is likely to be used in other areas that is not beneficial to Uganda. Education is so important and when you consider what is happening, particularly in rural areas now, you find that a lot of parents are not able to send their children to school and in fact in my area, there are more children out of school who should be in school than the case should be at the moment. So I strongly feel that since we have sources of funds now as a result of peace, we have got some savings, we have also savings from retrenching civil servants, we have got the army which has been reduced. So this money should be channelled to free education so that the country benefits. Thank you very much Mr. Chairman.

MR. MULINDWA BIRIMUMASO: Thank you Mr. Chairman. Mr. Chairman, I support the motion and this one is from experience. If you take how much money the government pays on one person at university and how much money would be required at primary level, you would find that that money can pay for as many as 30 school children. I say this and I said it in the campaigns, I still have a student I sponsor at Nkumba College where they pay 220,000/- . The same money, if you were to support primary children, it can support something like 40. Another reason Mr. Chairman, if you are talking of protect-

ing and defending the Constitution, the Constitution must be defended by people who can read and understand it. Much as we have tried to translate it in our languages, if people cannot read and understand, they will not defend the Constitution. So Mr Chairman, free education and compulsory one must be sponsored by the State and the State has all the means to enforce this, to collect taxes, it has the means even to take a parent who is refusing the children to go to school. So, from Primary One to Primary Seven Mr Chairman, and I want to strongly appeal to fellow Delegates to support this motion. Thank you very much.

MRS. MUKIIBI: Thank you Mr. Chairman. I stand to support this amendment. I support it in the view that education is very important for the development of a nation and for the well being of its people. It is better to deal with someone who is literate, who can read and write than someone who does not know anything. And since our country is basically agricultural and this agriculture is being done by the majority of the population who are not educated as of now, we cannot move, we cannot develop. If we need to revolutionize agriculture, we need free basic education for our people. That is why I support this motion. At the same time, I want the Hon. Members to view this as an investment. We are investing into education of our People and by doing so, we shall develop. We can think of industrialisation, we can think of any other modern technology but without educating most of the population, we cannot develop. We shall only grow. So I strongly support this motion Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, we have had views for, can I hear one view against? You have to be sincere because I can read from the faces of those who would not want to take the Floor notwithstanding their intention to support the motion. Let us hear from Hon. Amanyu Mushega.

MR. AMANYA MUSHEGA: Mr. Chairman, I am supporting compulsory education but with different reasons. I represent Igara East in the Constituent Assembly and I would like to inform the House that my campaign and history was actually precisely on this thing we are discussing today. It was hotly debated and many people were arguing that everybody has a right to produce children, that the State has a right to educate all of them. So you may permit me to spend a few more minutes to do that. Secondly, I have some indirect information I have gained by

virtue of my other activities and I hope that you allow me to review into those few that I can recall. So I have been experienced and I was bartered heavily over the issue of free and compulsory education.

So the first point is, you provide compulsory education but who should be responsible for it? First of all, when the child is produced, who is the first place of call in case the child is in trouble? It is the parent. When it is ill, the first person to call is the parent. Even when you make it compulsory, the person to take it to school is the parent and in the Draft Constitution already provided, it is that the parents have rights over their children and the State cannot take them away outside the process of the law and the rights anywhere in the world go with implications. When you have people with immense rights but no obligation, the result is anarchy and neglect. I will give an example of the Custodian Board property where people had right over the buildings but no responsibility over them. The result was disastrous. They had rights of entry, rights of sleeping but no obligation to maintain and the result was anarchy.

THE CHAIRMAN: Could you continue speaking through the microphone otherwise we are not hearing you properly.

MR. AMANYA MUSHEGA: So that is point number one I was making. The parent has the first call in terms of the welfare of the child and it is the parents, actually, who asks God to get a child. Even if our country was made of millionaires only, it will be most unfortunate if parents had only a right to ask God for children but they did not have an obligation to contribute to their welfare and upbringing. So rights go with responsibility.

Secondly, when you talk about budgets, not only should the State budget responsibly but parents also must budget responsibly. You have cases where people can have a drink of *ajon* or *kasese* or *muramba* or *malwa* every evening spending 500/- to 1,000/- on average but will fail to raise 3,000/- per term of a three months period for the same child. This is there. So there must be an element of making our State - because the State is made up of people. Where you have a population that budgets irresponsibly, it will produce a government that also budgets irresponsibly. So the first place of call is the citizen for proper budgeting and responsibility.

The third element I am touching on Mr. Chairman, is the question of procreation of children. To me,

responsibility for children cautions parents also to produce responsibly. When you begin to look after your child responsibly, you begin to think about the second child and the third wife responsibly because we have citizens in this country who are heading for the third wife when the first wife and the children have nowhere to sleep. *(Applause)*- And one of the things I have seen making Ugandans begin to think about families they can manage has been some contribution to the upbringing and education. You begin to produce responsible citizens and this is a cardinal principle for the development of the country.

The fourth element I will touch is the state of the economy of Uganda. When you have a country where children and parents have no food to eat, I think before you go to school, you must be alive. To be alive, you must be able to be fed when you have families in the state which are not able to feed themselves, we do not feed well. The figures I have is that the national average of the children between the age of one and five - in the national average, 44 per cent are stunted. It means they are under fed, they are not growing properly. In South Western Uganda, it is the worst. It is 53 per cent stunted and the medical people tell us that when the body is stunted, the brain also equally is correspondingly affected. So before you become clever, you must have proper nutrition, that is there. Now, when you look at the stage which has - *(Interruptions)*- let me finish this point and I will take the information, I have no problem.

THE CHAIRMAN: He is saying he wants to complete his point he is making before he accepts. He is under no obligation. Please, go ahead.

MR. AMANYA MUSHEGA: I am contributing as a member for Igara East who went through an exercise over there of parental contribution to education. So I am giving you the benefit of this experience. Let us look at the state of the economy as already mentioned there. I was contacting some people in the Ministry of Education and they informed me - because I was also keen as a Member for Igara East - in 1993, they calculated what would cost to take every child of Uganda to school, to provide the basics, the scholastic materials, the physical infrastructure and the welfare of the teacher. The total cost - and I am glad Professor Kajubi is here who also contributed - was 905 billion dollars. Even if you were to be extremely conservative in esti-

mates, it would not be less than 600 million dollars - *(Interjections)*- that is 900 billion shillings. Compare that with the total budget of Uganda for this Financial Year, it is less than 800 billion. So even if you were to divert all the resources of Uganda and put them into primary education, you will still not be able to afford the money for every child. Secondly, for every child that is maintained at tertiary level, you would have used the same money to maintain at least 200 children at primary. I will take the information Mr. Chairman.

THE CHAIRMAN: Could you inform him? He is prepared to take it.

MR. MULASANYI: Point of information. Mr. Chairman, I want to inform Hon. Amanya Mushega that what he is labouing I think is in regard to the primary schools you know here in Kampala like the Kampala Parents which take a lot of money. In the villages, we feed the children because they are day children, we put up the buildings and we buy uniforms. What the government needs to do is only to pay nominal fees which is very little.

THE CHAIRMAN: That is not information. You are going into another debate.

MR. AMANYA MUSHEGA: Mr. Chairman, I thank the Hon. Member for the information. But let him be aware of two things. One, I am a product of a rural area and I used to walk to and from, five miles for my primary education. Secondly, in my campaign for the CA, I was not campaigning at Kampala Parents and Buganda Road. It was in the bottoms of the hills of Igara East and some of the schools are very disadvantaged and the figures I am giving are based on a minimum cost of education, not the maximum, by the country. The last point I was trying to give, Mr. Chairman, was in relation to reduction of the Army and Civil Servants. This was done precisely to save more money so that the teacher is better paid and the civil servant is better paid. It was not that we are having more money to spare. We are creating more money to make the man responsible for the job. So my final contribution is that the people of Igara East are in for compulsory primary education, who should be responsible for promoting compulsory education? The State. Who should be responsible for meeting the cost of education? The State and the parent, share the responsibility. That is the message they gave me that is on the basis of which I won the election, that is what I am representing for the people of Igara East.

MR. PATRICK MWONDHA: Point of clarification. Thank you Mr. Chairman. Mr. Chairman, I am one of those Ugandans who is getting worried day after day at the rate at which the State is crumbling. The State has withdrawn from the health service, the State has withdrawn from tertiary education, the State is withdrawing from every responsibility. Mr. Chairman, we must be able to cultivate the concept of national good which my Friend Sendaula called "*bulungi bwansi*". Without the concept of national good, there will be nothing for the Ugandan to be proud of his country. I think free primary education is a good starting point to cultivate the concept of national good. (*Applause*).

Mr. Chairman, some Member talked of the enlargement of the catchment area. We have a lot of talent. I am sure, in this country but our problem has been the catchment area. I think the percentage is about 30 that ends up in the four walls of a classroom. If we enlarged that to 100 per cent, I am sure we would be able to capture the talents that this country has been doing without. Mr. Chairman, the missionaries who started education in this country did not wait to have all the facilities. Some of the schools like the well known schools, were started even under trees. All we are saying, can the State stay on the scene to take responsibility and take charge? Hon. Amanywa Mushega from Igara East has been tussling it out at another forum trying to present the government White Paper on education and one of his argument has been that if we diverted the funds now being spent at the higher level of education, we will be able to broaden the base. I am still talking about this broad base. I am sure many Members who talk about broad base in other aspects could support me in this particular one. Thank you Mr. Chairman.

MR. DEORWABITA: Point of clarification. Mr. Chairman, can I be allowed to clarify something here. I think it is important.

THE CHAIRMAN: Now, are you seeking clarification or you want to clarify?

MR. RWABITA: I want to clarify. I think Mr. Chairman, it is important that in dealing with this motion or amendment, it is unfortunate that certain Members are equating responsibility with no fees or free. It is not true. Responsibility must cover both the parents and government because we are looking on one side now. Everybody wants free education but must the parent withdraw from responsibility?

(*Interruptions*). Yes but this is what we are pushing now. We are pushing for just free education but definitely, suppose the government gave or allowed us not to pay fees, but we must clothe our children, we must give them medical care and all these. That is why I support the former amendment that responsibility must be carried by State and the parents.

MR. AGARD DIDI: Thank you Mr. Chairman. Allow me briefly to start with this question of the State withdrawing from services. Unless we are oblivious to what has happened in eastern European countries, already the State which has tried to control everything has crumbled in the Eastern countries. The way forward is called liberalisation. I would therefore, wish to remind Members that if we want the State to do this, let us divide between dreams and realities. I shudder at the prospect of a blanket provision that the State must give free education at a time when we know very well what is happening in the country-side. Teachers are not paid, children are not fed, on the other hand, we have seen that where people have been allowed to come together and provide for themselves their higher standards speak for themselves.

So without any fear, I want to suggest to Members that the way forward is to request government to undertake the responsibility of providing for incomes in people's homes. If I may give an example, we talk about focus on agriculture, year in and year out, as we import tractors, you do not provide for the effective buying of what the farmers produce. The little that is not eaten is left to rot. If you really provided for that kind of marketing, one, you will put money in the parents' pockets not only to send the children for education, but to feed them and provide them with health. I think the co-responsibility of looking after the child by the parent needs to be emphasized. What the parent cannot do, let us find what the government can do. When you talk about *entandiikwa* and other things, why do we not focus on these areas so that really, incomes come in people's pockets Mr. Chairman? It is with this in mind that I would like to caution Hon. Delegates that unless we are able to put realistic programmes, the World Bank year in and year out says, in the third world, you need free water, free health, free education, feeder roads and immunization. The same things always keep on recurring. But because plans or just dreams are one thing, in reality most of this never get effected. If we are going to ruin our future by demanding children, by sitting idling, that chil-

dren will have free education when we know very well that we do not have the capacity at present, then we are living in a dream world. The reality is to say government should set targets starting with the proposal for compulsory education whereby both the government and parents have co-responsibility to ensure that children are educated. Therefore, the welfare is not free education but going by the proposal that has been already presented about compulsory education for all, survey of the situation. I do not think it is a matter where we can all speak. If we do, then, that will be a really serious departure from our work methods. I think we have reached a stage where we can pronounce ourselves on this matter.

Let me put the question. The matter is quite clear, there was a Motion by Hon. Onegi Obel to the effect that Article 62 (2) be deleted. 62 (2) reads, "Parents shall ensure that all children of Primary School age are given Primary education which shall be compulsory in Uganda" that is as 62 Clause (2) stands. Hon. Obel for the reasons he gave, moves that that be deleted and the following be substituted, "A child is entitled to basic education which shall be the responsibility of the state and the parents of the child" (Applause) Then, Hon. Mulasanyi moved an Amendment to that one, so that it reads, "A child is entitled to basic education which shall be the responsibility of the State" deleting the words "and the parents of the child" Now, we have not reached that stage. I think it is not fair to begin voicing your preferences before I put the question.

Now, by the nature of our procedure, we vote on the Motion of Amendment moved by Hon. Mulasanyi and if that carries, then we do not have to go to Hon. Onegi Obel's. If it does not carry, then we go back to Hon. Onegi Obel's Motion. So, this is now what we are voting on, the one by Hon. Mulasanyi deleting the last part of that sentence. I will now put the question.

(Question put and negatived)

THE CHAIRMAN: So, we go back now to the Motion by Hon. Onegi Obel. I do not think we should debate it again. I think we put the question. I put the question? That is the general view you can hear. Once we have carried it that way, we do not have to allow further discussion. I will put the question - the general view is that we should put the question? So, I will put the question of Hon. Onegi Obel and I read it out.

(Question put and agreed to)

THE CHAIRMAN: Hon. delegates, we still have many Amendments, we have a number of them on 62 and I would like to suggest that since we agreed that we give the Legal and Drafting Committee ample time, to generate more work for us, and we have gone straight up to nearly 3.00 O'clock, that we adjourn so that those Members who have Amendments can have meetings with the Legal and Drafting committee and then we give a bit more time to the committee after lunch to continue and then the Technical Committee can work over the weekend and we have an ample work for us to process during the week.

I suggest that we end at that and we shall continue with 62 on Monday. Apparently, on Monday, there will be a group of students from Kampala Parents who are coming to watch the proceedings and I think it will be only fitting that we shall discuss the rights of the children when we have representation to the galleries from children. Hon. Adoko Nekyon, you have something to say?

MR. ADOKO NEKYON (Maruzi County): Mr. Chairman, I want to say something about administration. Two days ago, I was attending a meeting of the Drafting Committee here until very late, when I was leaving about 8.00 O'clock, I was surprised to find that outside, there was no sign of security whatsoever and there were many Members still in this Chamber. I think somebody must take precaution to guard Members of the Drafting Committee and the rest of the Members who remain here at least some people should remain outside there guarding them.

THE CHAIRMAN: Thank you Hon. Nekyon for this observation. I do not think Hon. Elly Karuhanga is right to suggest that Hon. Mayombo should stand outside as guard. I think what we shall do is that, the Secretariat will liaise, we have a Police Station around here and also we have other Members who have other responsibilities, we shall get in touch with them to ensure that the weakness is cured. But thank you for pointing out this.

Now, I adjourn the Constituent Assembly to Monday next week, 8.30 a.m. in the morning. Thank you, we stand adjourned.

(The Assembly rose adjourned until 8.30 a.m. Monday, 12th September 1994.)