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KENYA GOVERNMENT ARCHIVES
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SECTION 7

CONTINUED FROM
REEL No.

25

Friday, 18th December, 1959

The House met at five minutes past Nine o'clock.

Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS.

MOTION

SUSPENSION OF STANDING ORDERS.

THE CHIEF SECRETARY (Mr. Courts): Mr. Speaker, Sir, I beg to move that under Standing Order 139, Standing Order 20 be suspended in order to allow the Report stage of the Hospital Treatment Relief (Asian and Arab) Bill to be taken this morning. It is necessary, Sir, to suspend Standing Orders because, under our present Standing Orders, Friday is always set aside, as everyone knows, for Private Members' Day. But as it is also necessary for you, Mr. Speaker, to report to the Council of State before our next sitting day, which shall be Tuesday, it was felt that it was necessary to take the Report stage of this Bill this morning and that is the reason for this Motion and I beg to move.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock) seconded.

Question proposed.

The question was put and carried.

BILL

REPORT

The Hospital Treatment Relief (Asian and Arab) Bill

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Hospital Treatment Relief (Asian and Arab) Bill and has also considered the recommendations for amendment thereof made by the Council of State in the Report submitted by that body on this Bill and has made amendments to the Bill accordingly.

Question was put and Report was agreed.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck), Day for Third Reading.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Tomorrow.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): It will have to be taken, I am afraid, at our next sitting, because I have first to report to the Council of State on the recommendations of this House.

MINISTERIAL STATEMENT

BUSINESS OF COUNCIL

THE CHIEF SECRETARY (Mr. Courts): Mr. Speaker, I think hon. Members had better know what is going to happen about business. As things stand at the moment it looks to me as though we will have to have a full sitting on Tuesday of this coming week and not a quorum meeting as has originally been suggested. I hope to discuss with you, Sir, later this morning whether or not it will be necessary to sit possibly on Wednesday of next week, but I hope, as things stand at the moment, that we will sit on Tuesday only and thereafter adjourn until 4th January.

It will be necessary to take a full week early in January, from 4th until the end of that week, and before the Elected Members of this Council leave to go to London to the conference. This meeting will start on the Monday because I think it will be necessary to use all the days in that week for such business as we have.

MOTION

SHOPS IN AFRICAN MARKETS AND TRADING CENTRES.

MR. NGALA: Mr. Speaker, I beg to move:

THAT this Council being aware of the progress made by Africans in business, urges Government to grant to Africans who have or intend building permanent shops in all African markets and trading centres in rural and urban areas, a 33-year hold-lease so that their property is mortgageable to banks or local loan authorities. This will enable the Africans to get loans on long-term basis to carry on their business effectively.

Mr. Speaker, Sir, this is not going to be a long Motion because the purpose for the Motion is obvious. The present position is that all the lands in the African land units are held by the Native Lands Trust Board, and the different African district councils take long leases from the

[Mr. Ngala]

Native Lands Board. Now, the traders in African markets and trading centres have a temporary occupation licence which is renewable year after year. Therefore they are not able to use this temporary occupation licence in a way that would enable them to get loans from the banks or local authorities to enable them either to build permanent buildings or to stock their shops properly. Now, the African district councils or municipal authorities do let these trading centres to these people on very temporary arrangements. It is well known that the period of 33 years is very short. But there is no fixed period at the moment in some places. There you get 33-year leases which are obtained by the African district council or the municipal authority from the Native Lands Board. In some places it is 25 years and in other places it goes as high as 60 years. Now, Sir, the disadvantage of the present system is very clear. It does not provide any security to the trader and it does not enable the trader to expand his business, and we feel that a different system should be adopted. It is well known, Sir, that the Africans have progressed very much in business in Nyeri District, in Fort Hall, and in many parts of Central Nyanza and North Nyanza and we find even in urban areas Africans with permanent shops. Now they spent a lot of money in building these permanent shops according to the by-laws of the different local authorities, but after building these permanent shops they find themselves penniless, and they have not any money to stock their shops properly. Now if the African business has got to progress we must give some money to these Africans so that they can stock their shops properly. The loans that are being given by the local authorities at the moment are not sufficient and they have terms—very strict terms—that are not attractive to many African traders. Therefore, I think a personal approach to the banks, or a personal approach to the local loans should be made available to the African traders so that they can stock their shops with whatever money they want from their bank.

Now, Mr. Speaker, Sir, I am not only emphasizing the African aspect on racial grounds at all, but I feel that the Europeans have such facilities already and Asians have such facilities already, and

therefore, this Motion is intended to deal with a very specific situation that concerns the African community alone. Therefore the Members here in the House, I hope will appreciate it from that angle.

Mr. Speaker, Sir, I think many of the banks in East Africa and in Kenya and even the local authorities would like these facilities to be made available to the African traders so that they can be in a position to make personal arrangements and loan them whatever money they can afford to borrow from the banks, so that the African business can have some progress.

A title deed given to an individual person in a trading centre is a more helpful thing than just the temporary occupation licence. With a title deed one can get money from a bank just on the merit of the lease, or the title deed that he is holding. Permanent building societies are also ready, or would be very helpful in helping the traders that have title deeds or who have long leases from the Native Lands Board. Now here the present situation is that the Native Lands Board leases the land to the African district councils. Now I am not concerned very much as to who will lease the land, whether it is the Native Lands Board, or whether it is the local authorities or municipalities, but I am here concerned with the lease being held by the individual trader so that he can mortgage it and make arrangements—financial arrangements—with whatever bank or local loan authority he wants.

The period of 33 years is also just a minimum period. I am sure that different local authorities may find it feasible and suitable to fix their own period, but I feel that the period should not be less than 33 years.

Now already, Sir, some Africans who are lucky to have title deeds in some townships are benefiting from this. But it is a very small number of Africans who have title deeds on their own land, and I would like this beginning to be recognized and expanded by Government, so that the African can generally benefit from these facilities.

I think, Sir, that the Ministry concerned is fully aware of this demand on

[Mr. Ngala]

the part of the Africans, and I think without a lot more of talking the Ministry will see, the need very clearly.

Now, Mr. Speaker, Sir, I think the Africans that are in business find it very difficult with this T.O.L. system. They find it very difficult because although they have to renew it year after year it is a very expensive licence, but it does not give them the benefits that they would expect from it. The year to year arrangement—no bank can trust it, and no local loan authority can trust it, and we would like to equip the traders with something which would be acceptable and something which they can have some transactions with with the local banks to enable them to stock their shops. Many African shops have a very weak stock. This is due to lack of capital. The capital that they have is very small. They use the small capital in putting up a building. If it is permanent building it may cost anything up to Sh. 60,000. Now after building the shop the man has no money to stock his shop, and therefore he is likely to close it and look for some other occupation. Now, we do not want to put these people in this position. We want them, after building a permanent shop, to be able to carry out some negotiation with the local building authorities so that they can stock their shop and use it and have it as a means of earning their living. Now the time has come when the African expects to live on his business entirely. Some years ago, perhaps, the African had to supplement his living or his shop profits with what he would get from his *shamba*. But now it is not possible. We have got to equip him with a situation where he will entirely be depending on his trade. Now he cannot depend on this trade if his stock is very limited. He will not get a sufficient margin of profit that we want to get so that he can maintain his wife and his children decently and pay all the normal expenses of a family properly. Therefore the need for expanding African trade is very obvious. Now recently there have been African wholesale companies. Now if these wholesale companies are also put in this kind of system, they will be in a position to stock their sheds and their stores much better and probably serve their retailers or

their stockists much better than they are doing now. At the moment they cannot expand or they cannot serve their customers as efficiently and as well and satisfying as they would like to do, because of this limitation on the capital.

Sir, to conclude this very short Motion, Sir, I would like to say that this Motion is a straightforward Motion aimed at accelerating trade. It intends to help the African trader out of a very specific situation, largely affecting the African only. I hope the Government will accept it unaltered as I have already made it quite clear that the 33-year period is, in my view, the minimum period, but my main concern is that the T.O.L. should be converted into a lease or a freehold to be held by the trader himself so that he can negotiate with any bank or any local loan authority to enable him to get more capital to carry out his business. I believe that with a lease or a title deed even where there is no building standing, I believe interested banks can give loans on the merit of the free title deed or a lease.

The question of the African traders being trustworthy has been proved in many places already. I do not think any Member would argue that most of these people may not be sufficiently trustworthy. Now I think this will not come up in the Bill. After all this will be a personal individual arrangement between the bank and the owner of the lease or the owner of the title, and if any bank finds they do not have sufficient trust in the man or sufficient credit in the man, it will be a question of individual arrangements, and I do not think that would concern us as a Council or concern the Government at all.

Therefore, with these few words, Sir, I would like to move the Motion.

MR. MATE: Mr. Speaker, Sir, I intend to second this Motion, and to my mind what is required is a little tidying up of the situation because as it is the matter is tied up with the credit to Africans Control Ordinance and also the legal owners of the particular plots in markets where Africans have put up their buildings. And what I would like to do is to point out some of the awkward points in the situation as it is today, so that Government can consider how to put it right.

[Mr. Mate]

As the hon. Mover of the Motion has said, the African has made considerable progress in this, but he finds himself tied down with regard to borrowing money against his property—a building in a market. Some non-African merchants give Africans loans. Sometimes there is no security and what an African has to do is to go to the authority and obtain a certificate of exemption. On that authority, backed by a district commissioner or district officer, he is trusted to borrow a fair amount of money, and it takes some time to get this done. It takes the African, who does not understand these things some time before he can get the loan, even though he may have a very well built shop or building.

The other difficulty is that in the African markets these blocks are as it were, given to the trader by the African district councils who do not have the authority to collect a land rent at the end of every year, and the situation is very temporary. Mr. Speaker, Sir, I feel that in order to effect this the local (Inaudible) African should be changed so that those Africans, who want these loans can get them like the other places because there is a danger of exploitation as I believe Government intended to protect these people who are very few. The African business man is quite sure and understands the implication and he should be free to borrow the money from wherever he likes, and at the same time, he has a legal title to his shop or property.

But there is another danger I see here. Already in some towns some Africans have facilities for loans but in the majority of cases in the countryside they do not have it. There are certain fears among local communities which should be ironed out. For example, there should be consultations with the local authorities like African district councils to find out their feelings about these things; also the loan bodies like the joint boards which give loans to Africans now to see how they feel about it because I do feel there is a need for a certain measure of protection of certain individuals who may not quite understand the implications of this kind of change. I do not say it should be a wholesale change but it should be so

opened—the whole situation should be so opened—that the progressive African trader who is ready for this kind of thing does not find these two particular items and the trader control African provision which hinder him from getting the money, because in the countryside the African markets—there some traders may not understand what this sort of control means or what the mortgages are but the local authorities are their trustees. At the same time there are difficulties between the local authorities and the Central Government as between who should be leasing this particular plot. Sometimes it may be Government in a town, sometimes a local authority. I am in favour of the local authorities issuing leases to the particular individual in their own markets because, after all, they administer these markets and they are directly in touch with the local people.

At the same time there are other problems of who owns pieces of land. Legally today it is the Native Lands Trust Board; but the African district councils go to the land owners—the particular trust board—to get the piece of land to establish a market. These owners sometimes expect some compensation or during this consolidation they expect that this particular piece of land will be counted as their piece of land.

That is the customary way of owning land or the legal way of owning land and I feel these things should be ironed out before the system is adopted in general throughout the country. But, as far as the towns go, and as far as the progressive African trader is concerned, I feel there are no such great dangers.

Mr. Speaker, Sir, I beg to second.

Question proposed.

MR. HASSAN: Sir, I rise to support this Motion. We on this side of the House feel always very pleased to offer all help and assistance to our backward Africans engaged in commerce and trade. There is no doubt, Sir, that it needs a great deal of self-help in commerce and trade but to provide capital from sources, from loan authorities, from banks, from Government, from local district councils and so on, it is greatly helpful to the trade in this way.

The Mover of this Motion did not make the position very clear. In the

[Mr. Hassan]

African land units there are African markets only open to Africans. No non-African is allowed to trade in those areas and I am not quite sure whether any bank or any other loan authority would come forward to offer a loan on such tenure which is only restricted racially to one community. In the trade centres the temporary occupation licences are given to members of all races and we have found out that 33-year leases are offered to those who put up permanent buildings and it has been found by experience by the merchants in the trade centres that 33-year leases for investment in permanent buildings and permanent business does not carry any encouragement for banks and loan authorities to offer any loan to those merchants. And this complaint has been brought to our notice on more than one occasion.

If the Mover of the Motion had moved it entirely in a non-racial way it would have been usefully supported by members of all races. And I would suggest to the Mover, if he would agree, that a lease of 33 years is too short for a permanent building. It should be increased to 99 years.

I further would like to point out to my African friends that they usually talk their head off calling, "Racial, racial, racial!" of anything that is moved in this Council by other communities and when moving a Motion of this nature they should try to make it non-racial with a view to encouraging others to do the same thing in this Council.

With these few words, Sir, I have great pleasure in supporting this Motion.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir, the Government has great pleasure in accepting this Motion. For some time, Sir, we have been considering means of giving greater security of tenure to traders in markets and trading centres in order that they may obtain loans for development. The difficulty has been, Sir, that under the Native Lands Trust Ordinance, a lease for a term of more than one year has had to be registered under the Registration of Titles Ordinance, and that Ordinance requires that the plots must first be surveyed to a standard approved by the Director of Surveys. The large

number of the plots, Sir, and the cost of the survey which has to be borne by the African district council has precluded a survey to the standard required except, of course, in the case of some of the large and more important trading centres. Now, Sir, I did refer to the problem of security in markets and trading centres on April 22nd of this year when I introduced the Native Lands Registration Bill and in fact an amendment was introduced then at the Committee stage of that Bill to allow for registration independently of the provisions for adjudication and consolidation, that these provisions could be applied to any area of the Native Lands which had been set apart in accordance with part 3 of the Native Lands Trust Ordinance. This provision is now contained in section 2 (2) of the Native Lands Registration Ordinance.

What in effect, Sir, this section means is that the registration provisions of the Ordinance can be applied to any market or trading centre in which it is desired to give greater security of tenure to the individual plot holder. The whole area will be registered in the name of the Native Lands Trust Board which will be able to grant leases to bodies or individuals for any term it thinks fit. These leases will be registered in the same registry at district headquarters as titles to agricultural land which are, of course, as all hon. Members know, acceptable to the banks as security.

A survey to a high standard is therefore not now obligatory under the Registration Ordinance although we intend, of course, to maintain the highest standard compatible with the need for issuing these leases quickly.

Sir, this is such an important step forward that I would like to explain perhaps in a little more detail what we propose to do. Now, land for leasing in the Native Lands can be divided, Sir, roughly into two categories: first of all, land which an African district council is empowered to hold under the African District Councils Ordinance, such as land for markets and housing estates; and secondly, land which the African district council is not able to hold and some examples of that are townships and trading centres. Now it is proposed that the Trust Board should give long leases

... Now, I think it is better to go for the more progressive teachers, are helped even in the most trying situations, where they are suffering from their local conditions, and also the Central Government forming a special fund which can be used in this way. Also, I think it is better to make grant to Mr. Mwangi, Dr. Hassan, that I have already pointed out, but very clearly, the Motion is not a real Motion, and that is a political measure to try to help the African part of a specific situation. I have already pointed out that the African teacher's suffer as far as this particular aspect is concerned, not does the Labour or the Government in moving this Motion, but not being faced.

... Another point, Sir, which I would like to point out, related to, is the points raised in the House. I appreciate the attitude that there must be a consultation between the teachers and the local authorities and consultation between the local authorities and the books so that these things can be done in the interest of the good of the country.

... I would like also to point out one point raised by the Minister for Commerce and Industry concerning easy credits. Now, I have no objection at all that Africans should be given easy credits. We want the progressive Africans, or any Africans who are in a position to make use of this type of scheme, to be able to do so, not necessarily given easy credits. Therefore I think it will already be appreciated by the House that many Africans who have already got loans have not got these loans in an easy way. They have had to work very hard and prove they are credit worthy just as any other people in trade.

... So, I have raised the Government acceptance, but I would like this to be put in perspective as soon as possible, and as soon as possible should not take time. I hope, but with the new year we shall expect new things from the Minister in this particular aspect.

With these few words I would like to conclude.

The motion was put and carried.

MOTION

AFRICAN TEACHERS' SERVICE REGULATIONS

Mr. MUIROI, Mr. Speaker, Sir, I wish to move that this Council, being aware that the present African Teachers' Service Regulations are discriminatory against African teachers, urges the Government to unify the terms of appointment for all teachers in the Colony.

Now, this day, Mr. Speaker, from what we have seen of the previous Motion, I think it is a nice one, and I hope that the Minister for Education, Labour and Lands will have the same feeling like the Minister for African Affairs has just done for us today.

When one comes to look at the teaching profession in Kenya, Mr. Speaker, one finds that the basis should be that all our teachers must be contented in their teaching profession, because unless a teacher is contented he will never carry out his work properly, and therefore the Government must look upon the teaching service in the whole country as one unified system for all teachers in the country without differentiating them according to their colour or their skin.

Now the present set-up in the Education Department since 1956 is that we have got the African Teachers' Service Board, and in this African Teachers' Service Board all African teachers who have been employed by the Education Department are registered. Now, the main problem of registering the Africans under such is that at present no African can be employed directly by Government, and what has followed is that all the schools now many of them are under Boards of Governors, and therefore the African Teachers' Service is doing the service. What I want to make very clear, Mr. Speaker, is that there are two systems. Some teachers are under the Government, but there are those who were employed long before and very, very few, if any, now can be employed directly by Government, but all of them every African who comes out now into the profession has to go to the African Teachers' Service. Only yesterday the Director of Education and myself were sorting out a problem of one teacher who was employed back in 1957. When this teacher was employed,

Mr. Muiroi] he was under Government and it was discovered this year that, in fact, this person should have been under the African Teachers' Service and not under the Government. Now, this problem was amicably solved by the Director of Education. The African Teachers' Service is now for all African teachers. Now, I find that this scheme is a terrible thing, the teachers themselves find it very terrible. They do not want it, the Kenya National Union of Teachers, which has been holding its conference in Nairobi, and which ended yesterday, and they urged the Minister for Education, Labour and Lands that this should be abolished. Under this, Mr. Speaker, one finds the Code of Discipline. This Code of Discipline is abominable. It is a direct attack on the integrity and the standard of morality of the African teachers. Well, the Government has argued that when the African Teachers' Service came into being, various Africans employed by various private agencies, like the missionaries, were being treated differently, but now with the unified teachers' service all teachers will be treated in the same manner, whether they are teaching in Catholic management, C.M.S. management or whatever management they belong. But, the argument that we want is that all teachers are teachers in the country, and they should belong to one teaching service. With the unified teaching provision we should also find a unified teachers' organization.

The Education Department now has the Kenya National Union of Teachers, but this Kenya National Union of Teachers is predominantly African now, because the disabilities which African teachers are faced with now are mainly for the Africans. A problem again now since the Africans joined this discriminatory service one can hardly find, Mr. Speaker, an African becoming a senior officer in the Education Department. There are assistant education officers who should be trained and afterwards become education officers, but when they are employed by the Education Department they say you will be employed under D.E.B. Now the district education board will always say, "We have no money to employ you" and if an assistant education officer who

has been under the African Teachers' Service Board is taken on by the Government, this particular officer before he qualifies as a Government servant he has to take a year's probation, even if he has been teaching for the last three or four or five years. He has to be taken on probation as if he became a teacher for the first time that year. This is why I regard it as discriminatory. Now if the system was unified he would go and become a district officer from assistant to a district officer.

Now one finds that there is only one full district education officer in the Colony that is Mr. Solomon Adagala. Now if these people are now under their own separate service one can hardly think of how these African teachers could see their way to becoming district education officers. It is also discriminatory, Mr. Speaker, because the Africans who are recruited as assistant district officers are directly employed by Government, whereas those who are employed by the Education Department would be under district education boards. Now my plea to the Minister is this, that we want one contented teaching service for all our teachers in this country. We want to create one society, and the mixing of teachers into one single teaching service will make them have one supervision. When they are in one profession they will exchange their views at their conferences, but if we leave the Africans alone in their own areas we are doing a serious disservice to our country, in the Kenya National Union of Teachers there now a few Europeans who are teaching in the African schools. They will find they belong to the same teaching organization as the African teachers, but one can hardly ever dream that a teacher from the Duke of York or the Prince of Wales would become a member of the Kenya National Union of Teachers. Now, if the Minister of Education, who is very learned and very intelligent, thinks that he wants to create a good and harmonious relationship in this country, he is interested in creating an integrated Kenya, he should abolish this differentiation in his Ministry and create one contented teaching profession.

With these few remarks, Mr. Speaker, I beg to move.

MR. NYAGAH: Mr. Speaker, Sir, in seconding this Motion I would like to make it clear right from the beginning that this Motion in the way it is written might be taken by some people to be racial, but in actual fact it is not meant to be racial. If we have a change to put a little amendment but I am not moving an amendment, Mr. Speaker we should have said this: Teachers' service regulations are discriminatory against African teachers in the African Teachers' Service terms. It is discriminatory in this respect, Sir, that the teachers today the African teachers today are in two groups. You find some teachers in the African Teachers' Service terms and others in the Civil Service terms. It is discriminatory in that way. It is also discriminatory in that the African teachers in African Teachers' Service terms find themselves somewhat differently treated from the teachers in this country of other races. It is necessary to have a uniformity of teaching service in this country. And it will be a happy day when this Government considers that any new entrants into the service of teaching in this country should be treated alike, whether they be Indian, European or African or Arabs, and it also will be a happy day when this Government will start considering the terms of the existing teachers who are now in the African Teachers' Service, particularly the teachers whose homes are in this country should be immediately brought into a kind of uniform teaching service. It will be hard luck for the teachers who fall into that category, but for the teachers who have come from overseas, I think they could continue with the present terms, but any new ones should be made to understand that there are Kenya terms of service for every teacher.

Mr. Speaker, Sir, in Kenya we have an organization known as the "Kenya National Union of Teachers". In its constitution it allows a teacher of any race to join, and in this respect compliment has got to be paid to the European teachers in the Catholic service. I am told that there are a few of them who are members of the Kenya National Teachers' Union. We still hope that the lead set by the Catholic teachers will be followed by teachers of other races in

joining the Kenya National Union of Teachers.

The African teachers in the African Teachers' Service have a very genuine claim in asking the Department and the Ministry to look into the hardships or to try and review the position of their service terms of service. For instance, a committee of the Kenya National Union of Teachers very moderately considered their views and submitted their views to the Ministry and also to the Secretary of the African Teachers' Service, but the reply received was not as they would have liked it to be. For instance, although all the African teachers seemed to be in the salary scales recommended by Lidbury, they are not serving under the same terms. The teachers in the African Teachers' Service argue that the present Lidbury scales, which are applicable to teachers both in Government service and African Teachers' Service include allowances and privileges such as free medical service, accumulative leave, travelling allowances, disturbance allowance, loans on salaries, advances and so on, but in the African Teachers' Service they do not, and so it becomes very hard for a teacher who comes from a training college with all the qualifications necessary for a teacher to find that he has not got all these privileges although he has the same salary as the Government servant. That is something that this Government has got to look into. As I have said before, Mr. Speaker, the Kenya National Union of Teachers is a non-racial organization. It has started, and it is gaining momentum. It has the blessing of the Ministry and the Department of Education. The arguments for improving the teaching service in this country as put forward by this body should be convincing. They speak of salaries and their suggestions are not extravagant, and the arguments are sound. The pension scheme which these teachers have is also discriminatory. The fortunate teacher who finds himself still a civil servant does not contribute to his pension from his monthly earnings, but pension from his monthly earnings, but got to pay the provident fund.

Mr. Speaker, Sir, we, unto him, he who decides to resign in the middle of his service. He loses the employer's contribution and interest. He may be a

[Mr. Nyagah] perfectly good teacher with all the necessary character or qualifications but if he leaves before the time that is deemed for him to retire, he does not get what he had been hoping for a long time, the portion that belongs to the employer as part of the contribution to his pension. That too should be considered.

As regards promotion, Sir, sometimes it has been observed that teachers of other races have held positions of great responsibility, particularly in African education, while they in fact have not held professional certificates or qualifications. But for an African teacher it is very difficult for him to be regarded as a good teacher if he does not show a paper qualification. I know that in the regulations or in the Ordinance there is provision for that but how many teachers from the non-trained group has been promoted? I know an attempt—an effort has been made in this direction but more could be done.

The Government can be congratulated on its effort in promoting teachers from one group to another because in the African Teachers' Service there are what seem to be two or three water-tight compartments for teachers: T3s, T4s and so on. But today there is a slow flow from one compartment into another. To a teacher there are some financial benefits and interest in having this flow. But the teaching standard still leaves the question questionable. When you promote a good teacher at T3 into a T2 you deprive his primary school of a good teacher.

There is another side, Sir, which is discriminatory in as far as the civil servant teachers and the teachers in the African Teachers' Service are concerned. A teacher finds himself given the responsibility of a headmaster over an intermediate school under the African Teachers' Service terms. Is it realized, Sir, that that teacher is not only a classroom teacher? He has got to control the school committee and I can assure you that these school committees are very difficult bodies to handle—very evasive, sometimes not without reason! He has got to run the school, to maintain his pupils in a reasonable standard of education, and

his teachers. He has got to act as the link between the school managers and the school supervisors and most of his time is spent—if he is a genuine and conscientious headmaster—at the school. The African teachers in the African Teachers' Service have asked for consideration to be given for an allowance—a special allowance or responsibility allowance—for such responsible teachers. It is discriminatory, Sir, in that if a headmaster, say, of a board of governors school has got to be taken on, his position as the head of an institution has got to be considered and his salary is worth taking into consideration in view of the position of trust and responsibility he is going to have. Similar consideration, Sir, should be given to the headmasters of primary and intermediate schools who are under the African Teachers' Service terms.

Speaking with some experience, Sir, as a man who went round some of the African schools in a district, I found that the headmasters were all the time being whipped from every angle. The supervisors came and complained that the teachers' houses were not being built or completed. The school rooms were not being repaired. The school committees came back to the headmaster: "Why were you soft with the district supervisor? You should have tried to get some more money. You should have told them that you cannot put up this building." Afterwards the teachers come, "My house is leaking. I must have something done to it." And these responsible people sometimes feel frustrated because of the amount of work and responsibility they have got to shoulder. And it should be recognized by some form of special allowances.

A fellow teacher trained at the same time with the same qualifications, who perhaps went into the Government Civil Service, and is a civil servant does not have all these worries. He does not contribute to his pension. He does not have to deal with the school committee or the teachers. He only works sometimes for a few hours in a day.

I do not want to be long on this one because we have spoken on it before on several occasions but in this country we are heading towards a united people. Perhaps in this respect of the teaching

[Mr. Nyagah]

service we could begin by pulling together all the teachers with the necessary qualifications; and in a small way begin nungling and intermingling in the schools that we have in this country, Europeans, Asians and Africans. After all, what does it matter if a teacher has got a diploma from Britain and a certificate from the Minister of Education in England certifying that he can teach in any school, if when he comes here he is only confined to an Asian school because he is an Asian, to an African school because he is an African. A small beginning must be started that will kill this element of discrimination which we are talking about. It will be the beginning of non-racial schools which we have spoken so much about in the past.

In conclusion, Sir, I would say that all Kenya teachers from now onwards or from as soon as possible, maybe in 1960 which is the year of great things in this country and in the Commonwealth, we should embark on a plan for all Kenya teachers, for non-racial terms of service and equality of scale very similar to the Burnham scale and that will help us a lot in improving our education, our relationships, and anything we can think of that is going to contribute to the welfare of this country.

With these remarks, Sir, I beg to second the Motion.

Question proposed.

MR. GUTGE: I am sorry that the first occasion on which I have the honour to address this House the Motion should be one of a somewhat controversial nature because, Sir, I am afraid that I am unable to support this Motion because I do not consider it is true to say that the present African Teachers' Service regulations which are the subject of this Motion are discriminatory against the African teachers. They were, in fact, designed to meet the special requirements of African teachers and they do indeed confer on them certain privileges which I shall mention later.

In the words of the hon. Member for Coast Rural during the last Motion, they were to help the African in a specific situation and therefore, as he claimed, those were non-racial. I shall try and

show also that these regulations and this service is not intended to be a discriminatory one.

The hon. Mover and the Seconder made the point that the conditions of employment of African Service teachers were inferior to those available to certain teachers employed as permanent civil servants of the Government. Now, to a certain extent this is true. The discrimination, however, is not one between the African and the non-African but between the permanent civil servant of all races and an employee of any race who does not happen to be a civil servant. It is at present necessary for this Government in common with other developing territories to recruit qualified and experienced teachers as well as other officers from overseas for service in the whole of the education system, African, Asian, Arab and European. In order to do this, Sir, Government has to offer terms of service which will enable them to compete in the open market with other recruiting territories. Such officers will be required for a number of years but the proportion is diminishing every year. It is no use suggesting that in future expatriate officers that are required shall be forced to comply with local terms because the simple answer would be that we would not get anybody. We have already on existing terms got a large number of vacancies which cannot be filled locally and which we are having certain difficulty in filling from overseas.

Now, Sir, I am sure the Government would like to be able to apply Civil Service conditions to everybody including teachers who are not employed by Government but this has never been possible. It may be possible in the future, but the revenue of the country will have to show rather a different picture from what it does at the moment before such a step could be contemplated.

Mr. Speaker, Sir, there are approximately 17,000 teachers in this country and of these approximately 2,000 are employed directly by the Government. Less than half of this number enjoy the privileges which hon. Members find so attractive. It is not a large number, about 5 per cent, and it is a proportion which is being steadily reduced. For example, in European education the majority of schools are run by the Government but

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in that service only 43 per cent are employed on permanent terms. The rest are purely temporary—on a week's notice with no privileges, medical benefits or anything.

I would like now, Sir, to do two things. First, I would like to say something about the origins of the African Teachers' Service and the regulations which derive from that Ordinance; and secondly, to compare the conditions of service under the employment regulations with those which apply to non-African teachers who are not members of the permanent and pensionable Civil Service. Before 1952 the only rule applying to African teachers working in grant-aided schools were that they had to be paid in accordance with approved scales of salary. Now, apart from this, their conditions of employment were entirely at the discretion of a wide variety of individual managements, some of whom were good employers, others were frankly not so good. Teachers were liable to instant dismissal for a wide variety of reasons, few of which sometimes were connected with the performance of their professional duties. Their position regarding leave was obscure. They had no security of tenure and no provision existed for retirement benefits. There was no control whatever over the salaries paid to teachers in unaided schools. This situation was common to many territories as can be seen from the Report of the Binns Commission which came round to study conditions in East and Central Africa. In 1949 a committee was set up to examine certain problems connected with African education. One of the most important recommendations adopted by the Government as a result of this Report was the establishment of a unified African Teachers' Service with the object of removing disparity in terms of service throughout the Colony. The situation was described in the Report as follows: "The committee believed that the continuance of circumstances in which there was diversity in African teachers' terms of service throughout the Colony's educational system and teachers who were left to make the best terms and conditions they could for themselves in the open market would not only be out of keeping with the general nature of the teaching profession but harmful to the

ordered development of the education system." Thus in 1952 the African Teachers' Service was set up which eventually recommended that a unified African Teachers' Service should be established statutorily by means of a special Ordinance. This was done in 1954 and the detailed employment regulations which represent the main instrument of unification followed in 1956.

There were certain misgivings at the time on the part of certain teachers lest their new conditions should be worse than the old but generally speaking these measures were welcomed and rightly so as a new deal for African teachers. The regulations laid down—common conditions for appointment and a regular procedure for the termination of appointment—are in no way less favourable for African teachers than they are for those of any other race. I would like now, Sir, to draw attention to some specific points in order that hon. Members may judge whether these regulations are, in fact, inferior or discriminatory. I will deal with the points in the order in which they appear in the regulations, Sir.

Increments: one of the penalties sometimes applied for inefficient work is the stoppage of an increment. In the African Teachers' Service an increment may be deferred but cannot be stopped. If I may quote from the relevant section which reads as follows: "But any such increment so suspended shall nevertheless be paid to the teacher on the expiry of the said period of 12 months or on the termination of employment, whichever is the sooner"—which means that however bad the teacher is, even if his inefficiency will eventually result in his dismissal, any increment deferred must by law be paid to him. Now, Sir, in every other type of service of which I am aware, once one's increment has been stopped it has been stopped for good and all.

Leave: regulations, Sir, provide an employed teacher shall be entitled to a maximum of 42 days leave with pay in every year of employment. In addition, the teacher may be granted additional leave at the employer's discretion during school holidays. In addition he may also receive compassionate leave up to a maximum of 30 days in term time at the discretion of the employer. No other

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service, certainly not Government, provisions statutorily for so much leave.

Sick leave: the main provisions of the regulations regarding sick leave are precisely the same as for Government officers but these regulations also provide for three months' maternity leave on half pay for married African women teachers. All other married women teachers are required to resign their appointment in such circumstances although, of course, they may be re-employed if a vacancy arises later.

The hon. Seconder referred to pensions. The pensions regulation under the African Teachers' Service provides for all teachers to participate whether married or single and Government contributes annually 8½ per cent of the teacher's salary. In all other non-Government pension and provident fund scheme, Government contributions are limited to 7½ per cent. I might add, Sir, that in a Government pension scheme, if the beneficiary dies all benefits normally cease. Under the African Teachers' Service scheme the benefits continue to be paid to the teacher's dependents until the whole of the teacher's contributions plus compound interest at 3 per cent have been exhausted. I have already had an example of where that has been of very great benefit to a teacher who died after he had in fact only received about £100 from this provident fund but there was £1,000 standing to his credit which went to his widow and family at exactly the same rate that he himself would have received if had he been alive.

Scope of the scheme: There are, Sir, over 100,000 African teachers employed in unaided schools. The protection and benefits available under these regulations are applicable by law to all such teachers whether or not they are employed by Government or in aided or in unaided schools. The teacher in private and unaided schools of every other race has no such protection and his salary and terms of service are entirely a matter for private arrangement between himself and his employer.

The hon. Member in his speech raised the question of the code of discipline. I do not want to deal with this particular aspect at great length but I would like to make this observation, that the code

of discipline—I beg your pardon, Sir. One of the matters which the African Teachers' Service is charged to consider is the standards of discipline of the service. Now, in this respect they were asked to consider not only employees but employers. This code therefore has been drawn up not as an insult to African teachers but to make it quite clear to them so that there can be no doubt as to what the most common professional offences are and what sort of punishment or penalties are liable to follow. That, Sir, is on the teachers' side. On the employers' side it protects the teacher from unwarrantable meting out of penalties which are not provided for so that both the teacher and his employer know clearly where they stand. That is the sole purpose of it. And a third purpose is an attempt—a serious attempt—to raise the professional standards of the African teacher. Now, it is a fact that at present we do receive a tremendous number of cases in which the African teacher falls short of what would be desired. I personally hope that it will be possible in the future for this code to be less specific and in more general terms but until we can have a reduction in the number of cases of gross breach of professional integrity, it would, I think, be very dangerous for us to be less specific about some of the offences which we are trying to eradicate from the service.

The hon. Mover, Sir, also referred to the fact that this service, this African Teachers' Service, was discriminatory in the opportunities for promotion. I would like to assure him, Sir, that the existence of this service has no bearing whatever on the opportunities for promotion to higher rank. I think that there should be quite clear distinction as there is in the United Kingdom and no doubt in other countries between the body which administers education centrally and the rank and file of teachers working in schools for a whole variety of employers. Now, it may well happen that administrators are required, and if it does not happen at the moment, I think it should happen, that if a teacher is selected to move from pure teaching to an administrative post, which is the responsibility of Government, he should change his terms of service from the teachers' terms to the administrators' terms and become a civil servant just as he would if he were

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an agricultural officer. But the fact that there are at the moment not very many Africans in administrative posts is only a temporary feature, I hope. The Ministry have plans for greatly expanding the administration of education at the district and locational level and I very much hope there will be opportunities for many more Africans to enter the field of administration. The only reason I raise this, Sir, is to emphasize that this question of promotion has nothing whatever to do with the existence of employment regulations for Africans.

I think I have said enough, Sir, to demonstrate that these regulations are not discriminatory except in the Africans' favour. We must consider not the very small body of civil servants who are employed directly by Government on Government's business but the vast body of teachers who are employed throughout the country by boards of governors, district education boards, and other agencies. They are not civil servants, Sir, they are employed in a teaching capacity in schools.

Now, Sir, in spite of what I have said, there is a very great deal in favour of a unified teaching service extending to all races and Government is by no means hostile to this idea in principle. It is in fact looking into this proposal very carefully and it does have the support of all the directors of education in East Africa for that matter. It is felt that the general salaries structure of the Civil Service which is at present, as the hon. Seconder mentioned, is the basis of teachers' salaries, both Government and non-Government, is not really suited to the special needs of a teaching service. With few exceptions the teacher's salary in Kenya is dependent upon paper qualifications, both academic and professional, which he possessed on entering the service or perhaps acquired later during his service. A more satisfactory system would be one which takes account not only of the teacher's initial qualifications but also of the degree of special responsibility which he is called upon to undertake during the course of his teaching career. I entirely support the remarks of the hon. Seconder that at present our salaries structure which was laid down not by the African

Teachers' Service but as a Government measure following the Lidbury proposals, that this salary structure does not give except in a few cases adequate remuneration for the special duties and responsibilities which teachers have to undergo. The Burnham salary structure in the United Kingdom which he mentioned is one which does take account of both these factors, the academic qualification and the measure of responsibility. We are therefore trying to devise such a system for Kenya. Unfortunately the main obstacle in the path of this proposal is as usual the financial one. As a long-term policy it might well be that a revision of the salaries structure of the kind described would effect economies because if it contained, as it must, a liberal provision of graded responsibility allowances, the basic salaries could well be very much shorter. But there is little doubt that in the initial stages it would involve considerable expenditure because naturally most of the existing teachers would opt for the new system if they saw some immediate financial advantage. These financial considerations make it extremely difficult to introduce such a scheme throughout the education service at the present time. I would, however, like to assure hon. Members that the Director of Education is continuing to explore the possibilities of such a scheme. Now, that may sound a rather vague term, but in fact a great deal of discussion has taken place and draft schemes have been formulated and when the time is ripe and when there is a chance of the introduction of this scheme—I am quite certain that the Minister will invite the full co-operation of the Kenya National Union of Teachers and other professional organizations to examine the scheme most carefully before it is submitted. If at some future date, earlier rather than later I hope, it could be accepted, I think it would also involve the establishment of a unified teachers' service for all races, but I must in fairness sound a note of warning. In my opinion, if such a common service comes to be established, the provisions of such a service, apart from the suggested new type of salaries structure and possibly other modifications, are much more likely to resemble closely those of the present comprehensive African Teachers'

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Service than any other existing conditions applicable to teachers at the moment. While, therefore, I can say that the Government is more than sympathetic to the idea of establishing a common teaching service, although for a somewhat different reason, the suggestion that the present African Teachers' Service is discriminatory against the African teacher is so untrue that I feel I have no alternative, Sir, but to oppose the Motion.

DR. KIANO: Mr. Speaker, Sir, as a teacher myself I feel particularly concerned in this debate as I do feel very sorry that the acting Director of Education has found it necessary to reject this Motion.

Mr. Speaker, we do not have to be reminded that the teaching profession is one of the noble professions that any person could enter into and one to which the country owes a great deal. I feel that anything which can be done to attract people to this profession should be done and done as soon as possible.

Now, the entire case of the hon. Member who has just sat down was based on a denial that the terms of service for the African teachers compared with the terms of service for the other teachers of other communities are not discriminatory. He felt that there was no discrimination at all. I think the hon. Member of this Motion who I had the opportunity to hear when I came into the House gave a number of examples which I thought did indicate a certain amount of discrimination with regard to African teachers' terms of service. I do not want to bore the House with another list of disadvantages, if I may call them that, which we do know are experienced by African teachers. I do feel, however, that one does not have to go very far to point out, for example, that the recent code regarding African teachers' moral behaviour which apparently was not applicable to the other teachers, and also the fact that there is some discrepancy in some of the salary structures which I am glad to hear that the Department is interested in doing something about. However, I feel that it would be a tragedy if this debate ended without any constructive agreement be-

tween ourselves on this side and the Government. Therefore I believe that if the House is going to help the Government accept the idea behind this Motion then we might modify part of the Motion, the words that the Acting Director finds particularly unacceptable to him, provided he accepts the idea, so that we can really try as much as we can to make the African teachers feel that they are receiving as fair treatment as the teachers of the other two communities, because it is important that those who have undertaken to provide the services of teaching our children in this country should be made to feel that they are appreciated both by the members of the public and by the Government. Again, we should do all we can to attract more and more African young men to the teaching profession, and therefore it is very important if there is any feeling—and I know there is—of differential treatment or discrimination it can cause great disservice to the country by making more and more young men leave the profession. That is why I feel it is important for us to look for some agreed policy which will take away the feeling of discrimination or differential treatment. I know that the Kenya National Union of Teachers which perhaps the Director does not know that I joined recently in my capacity as a teacher for the Makerere Extra Mural Department although I had considerable difficulty because, as an owner of a school, I was an employer of teachers. However, in that union of which I am a member there is a feeling that this differential treatment does exist, and it was somewhat encouraging recently when the Minister for Education spoke to them and indicated that there is concern in the Ministry regarding their terms of service. Therefore, Mr. Speaker, I felt that the Government should accept an idea expressed in the following amendment which is not materially different to the original Motion but which is perhaps more accommodating to the hesitancy of the Acting Director of Education. As I listened to him, Sir, I felt that he really wanted to accept this Motion only that he did not want to commit his Government and say that discriminatory practices do exist or are allowed. I thought that if I used the word "disadvantages" he might accept the Motion.

[Dr. Kiano]

Therefore, Mr. Speaker, I propose that we drop all the words after "Council" and let the Motion read as follows:

THAT this Council urges Government to take immediate steps designed to unify terms of appointment for all teachers in the Colony and thus remove any disadvantages experienced by African teachers.

Mr. Speaker, I beg to move the amendment.

MR. NGALA: Mr. Speaker, Sir, I stand to second the amendment as moved by my hon. friend Dr. Kiano.

Now, speaking again as one of the teachers, Sir, I have personal experience of the difficulties being experienced by teachers in their present terms of appointment or service, and it is necessary that people serving in one profession in Kenya should be appointed in a unified kind of manner or method. This is sadly lacking in Kenya today.

The African teachers are appointed on a different basis and even their terms of service in different areas where they work are quite different. The Government has left the African teachers mostly at the mercy of what they call managers, and different managers handle them in any way they feel appropriate. There is no uniformity in the way that the African teachers are being handled. I feel that an amendment of this nature would very much help the situation as it is today in the country.

So far as his appointment is concerned, a teacher may be employed by the Teachers' Service Board and appointed on different, very different conditions. Teachers with the same qualifications may be appointed on the Government lines and may be on very different professional treatment. Therefore I think that the Director of Education should not find it difficult to appreciate the idea behind this amendment, because we all want teachers to be helpful to the country and serve the country in a unified sort of service and be provided with the same opportunities regardless of their race or regardless of where they are serving.

The differences as between Government-aided school teachers and the Government teachers are very big. For example, I was serving in one of the

aided schools, and whenever I felt ill there was no provision for my hospital payment and the so-called Teachers' Service Board did not have any conditions whereby I could go for any kind of treatment paid by the Board. I felt that the medical treatment was very poor, whereas other people, teachers appointed under a different body, would have their medical services looked after. I felt that this disparity was very unfortunate among people who are in the same profession.

So far as the question of leave is concerned, Sir, I happened to be headmaster for a long time in one of the aided schools, and although the Director of Education has mentioned the 42 days leave I never got the 42 days leave for over ten years. Now, this is not because I did not want my leave; I wanted it; but the duties of a headmaster appointed in this system that we have today is such that you cannot feel free to leave your school or leave your school premises, whereas a teacher appointed under a different scheme would be quite free to leave his school and go on leave in Uganda or Tanganyika or anywhere he likes when the school is under another person. I felt also that this difference is very serious and should be looked into.

The provision of family treatment when they are ill is another thing which shows a lot of difference between the different appointments, and I think that the teachers themselves have expressed in many meetings, so far as I know, a great deal of dissatisfaction over the present situation of appointments. I do not know whether this has been made clear to the Ministry or to the Minister himself during this week but I hope it has been made clear to the Minister this week, that the African teachers feel in the direction which Dr. Kiano has indicated in moving the amendment.

Therefore, I think that without wasting or holding up the Council I would like to second the amendment. I hope that the Government will accept it and take steps towards removing these disparities existing among teachers who are so helpful to the country; that within one profession there should not be any discrimination.

I beg to second the amendment.

Question proposed.

[Mr. Mate]

Mr. Deputy Speaker, among the teachers today there is uncertainty and a sense of insecurity, and as my hon. friend the Member for South Nyanza pointed out, the teachers form a very important part of the educational structure. It is important to see how the key-stones in the system can work to the best of their ability instead of having their present sense of uncertainty.

Originally, when the teachers' service was thought of, generally the African teachers were thinking of terms exactly or as near as the Government terms as possible. They were not interested in the other terms of service under which they were serving, and I think myself that it was a pity that the feelings of the African teachers were not taken into consideration when the present system was arranged. I feel that Government should realize that that was a disappointment to many African teachers, so that the teaching service after that was at the mercy of Government, the managers, and the teachers felt lost. This, Sir, has been responsible for a lot of discontent among the teachers. At the same time there are some inside difficulties that make this necessary, because with these different managements all over the country the supervision varies so widely. On top of that we have this insulting code of discipline for the teachers coupled with the managerial interference and Government control the whole arrangement is chaotic. Mr. Speaker, I have had experience in teaching under three types of managements; I have served in Government service, board of governors, and other private management. I feel that this confusion that the teacher has today in his mind and which of necessity affects his work was brought about by Government ignoring the teacher's own feelings about the kind of service he wanted.

Mr. Speaker, to point to a few examples, teachers used to have poor houses. They want better houses. In many stations the houses are very poor, of a very poor standard, in all the schools—primary, intermediate, and secondary. What have we got today? A social, racial and differential way of allocating houses. In the African secondary schools the houses generally are allocated, by way of race. I am glad to say that there are a few changes in a few schools, but

even so there is no great virtue in this if in neighbouring schools the old had system prevails, where even junior officers might get better houses in the same service. We want the African teachers to be loyal, but it is beyond human endurance to put up with these conditions. So the housing difficulty is one very essential factor in this discontent and feeling of uncertainty.

The other aspect of it is that with these managements the houses vary according to the money which is available, or according to the wishes of the supervisor or manager. These teachers come out of the same colleges and why should these same people who have had the same training be subject in the same service to different conditions?

The other difficulty has been the question of responsibility. For a very long time African teachers were not supposed to be able to look after intermediate schools. As soon as African teachers began taking charge of these managements the European staff moved up another grade automatically, even if they were not qualified at all for these posts. At the same time in the secondary schools there are many qualified African teachers who still enjoy very junior positions. They have not much say in those schools and outside. We have had examples given about one or two men in a province, but what about all the other districts of the Colony. For example, we have the idea now of having divisional education officers. Why not go direct?

When we come to salaries, Sir, the salaries of the African K.T.1 and the Asian K.T.1 are different. They have passed the same examination, the same school certificate, under the same examinations body, and we do not see why there should be that difference. Then, take the case of the T.2 who are upgraded and who go to a college for training. They are promoted. When they go out a colleague who has done the two-year course in the secondary school and the two extra years in a training college gets the same pay. At the same time, take the K.2 who has done the four-year course. Is the Government implying here that the academic training is of no value? These points are responsible for the present discontent among the African teachers.

[Mr. Mate]

Mr. Deputy Speaker, Sir, the educational situation in Kenya is critical. The Department has been told this time and time again by African district councils who represent the parents as a body. The meaning as far as I am concerned of the so-called taking immediate steps even when they are amended just means *bado kilogho* and you know what that means. We are tackling another aspect of African education.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) left the Chair]

[Mr. Deputy Speaker (Mr. Bechgardt) took the Chair]

The Government said we shall take immediate steps and this is still *nguja kilogho* even today, and my opinion, Mr. Deputy Speaker, is this, that Government should address themselves to this particular aspect and give it a more serious consideration, especially because if the teachers become frustrated all the time in spite of the representations we may talk about the shortage of money, but Government should produce these so-called plans I have in mind. As the hon. Minister pointed out about another kind of skill and take into account special qualifications. Why can they not show us the plan and make the teachers feel good. When it comes to the application of this code of discipline, why should so many teachers leave every year and go and become clerks in business offices, in African district council offices or in any other jobs you find, and yet Government tells us that they consider education a very important factor. Mr. Deputy Speaker, I think that our Government are ignoring this particular issue because if they realized the importance of it they would at least know what it had in mind. Added to that is this idea of relationship between the teacher and the community. I know schools where the teachers feel helpless before the parents just because everything that must be done must be done through the management. They have committees that are not at all co-ordinated, and as a result the teachers, if they were left alone between the management and the community. How can such teachers be happy and keen about the work they are doing? I feel, Sir, when it comes to the relationship

between the parents and the teachers and the managements, the present committees are not doing well enough. There must be a better link-up so that the teachers can get the help they want from the parents directly and at least to have better conditions.

[Mr. Deputy Speaker (Mr. Bechgardt) left the Chair]

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) resumed the Chair]

For example, housing or even classrooms, and I believe the Government instead of telling us they are taking immediate steps or they have got it in mind or something is cooking or there is a three-year plan or they should appoint a commission to go into the whole question and not just say they are aware of the problems and they are going to do something about it. The matter is immediate and of national importance. Mr. Speaker, Sir, I beg to support the Motion, the first amendment and the second and hope the Government will consider this as a first priority as far as the African is concerned.

MR. ODINGA: Mr. Speaker, Sir, I rise to support the Motion and all the amendments which I actually counted as improvements upon the original Motion.

Well, Mr. Speaker, I should have not really spoken on this particular Motion since I have got so many people who only recently left teaching to come to this House, and they are better qualified to speak on these terms of service than myself, because I remember that I left teaching some time back when our teaching service was more or less the same, and I did not know that there had been created another body. Just as always the Government had already created another Board to deal with the Africans, and as usual they take the African case to be different from all other cases.

Mr. Speaker, at least we have expressed in this House that it is really a shame of the Government to regard the African to be a little bit more different from other people. The hon. Assistant Director of Education has expressed here that what they mean by the new terms of service is that they are only for the good of the African teachers, but how long—always that is the expression we are given here. "It is only for your benefit. It is

[Mr. Odinga] We say that it is not good for you. The other side say, "It is good for you," but we say, "It is not good for us." Now who will really know—who will be the better judge of what is good for me, I think I should be the best judge to know really what is good for me—not someone who comes from outside and says, "That is good for you." All the gentlemen from this side have all been teachers and they are expressing that these terms of service are most undesirable and that they are not good for the African teachers. I have had concrete examples. We had a very good teacher in our area, who is now teaching in Uganda, and as a result of some disagreement on the question of the code of discipline this man left teaching. Another man I only happened just recently to meet in London, who was qualified some time back in England, he came back here and was employed in one of the schools here, but later on I heard that there had been a disagreement on the signing of the code of discipline, and as a result he left this country, and now he is teaching somewhere in Europe. Each time in here we are told that there are no teachers—there is a shortage of teachers—but if you want education where can we get the teachers? But the Government is most careless with the teachers who are already in the field.

Mr. Speaker, I should say that teachers play a great influence on the children who are under their care, and as a result I am perfectly satisfied and convinced that among the teachers there should not be any segregation at all, because—take for example—I understand from those people who have been to universities in Great Britain, or those who have been to Cambridge, I understand that the professors are the same—and that even the subjects which they do are all the same, and the final examination and qualifications are more or less the same. Then when they come back to this country why are they put on this discrimination again? They qualified the same, but simply because of the colour of their skins, why do we have this discrimination. They have the same knowledge, they are going to pass on the same knowledge to the children, and as such they should be treated more or less equally. Let the terms of service be more or less equal, and there is no

reason why my friend, Dr. Kioko should not go to teach at the Prince of Wales School? Why should he not go to teach there? Why should he not go to teach in an Indian school? Why should he not go there? Because the truth is that by the exchange of teachers among the various schools and races we could not bring the necessary influence which will bring all these people together. I do not know, Mr. Speaker, whether an African who is qualified in a university somewhere in Great Britain would be different from a European or an Indian who had qualified in the same place. They would be the same and they would impart the same knowledge to all the children whether they are European, Indian or African children. And therefore the treatment should be more or less the same throughout.

At the same time the Assistant Director of Education advanced another reason that they devised this Board to deal with the African teachers simply because they wanted to induce the overseas teachers to come here. Well, what is the use of devising another condition which makes the local teachers dissatisfied and they run away from the country to go and teach in Europe when we again try to get some people to come here to teach here: when you try to induce some people to come and teach here, it is a bad type of—(Inaudible.)

to hold what you have now, get in your own country rather than seek something which is very far from somewhere and preserve it.

Mr. Speaker, I must admit that, I know very little and therefore I should not go very far. I support the Motion very strongly and I hope that this Motion, together with its amendments—now for the second time today the Government will accept—and that, you know, we will justify our compliments to them next time.

THE SPEAKER (Sir Ferdinand Cavendish-Bentley): The debate on this Motion will terminate at fifteen minutes past Twelve o'clock. I shall allow the Mover quarter of an hour or ten minutes at least in which to reply. In the meantime I shall call upon Mr. Mathieson.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, I will be very brief.

[The Minister for Education, Labour and Lands]

I think that the main subject matter of the Motion has been most adequately dealt with from the Government side by my hon. friend, the Deputy Director of Education, who has demonstrated, I am confident, to most Members of this House that if in any sense the African Teachers' Service regulations are discriminatory they are discriminatory—in favour of African teachers.

I was surprised to hear the hon. Mover of this Motion—who I see is with us again—state that the Kenya National Union of Teachers regarded the African Teachers' Service regulations—and particularly the code of discipline—as an abomination, or words to that effect, since, Sir, I myself attended and opened the annual general meeting of the Kenya National Union of Teachers and heard an excellent address delivered by the president of that Union. And in the course of his address the president remarked that although there were some aspects of the code of discipline which the Union would like to discuss with the Ministry—and we intend to do that, we are very ready to do that—he said that in most cases this code of discipline and the regulations helped the members of his Union and protected them against arbitrary treatment from managers.

MR. MULIRO: Question!

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): The hon. Member says, "Question!" but I was there; I am reporting what the president said; I heard it with my own ears! He cannot question it—he was not there!

The amendment to the amendment now before the House, Mr. Speaker, is acceptable to the Government. I should like, however, to point out that when we say we are ready to take immediate steps these steps will necessarily involve a very close examination of the differing terms of service enjoyed by various classes of teachers at the moment and will also involve interterritorial consultation since in these matters we wish to march in step with our neighbouring territories since our problems are the same and our market for recruitment overseas is the same. And also I would like to point out that when we state that we will unify

the conditions of service for all teachers in the Colony, I think that for some time to come there will necessarily have to be a number of exceptions to this general policy. If one takes, for example, the problem of staffing new institutions such as the Kenya Technical Institute, one must look overseas for people with particular qualifications and that applies to other specialized types of schools as well. And if we are to get the right people to lead these specialized sectors of education we must offer them more than we can afford to pay to every teacher of comparable seniority in the Colony. And we must have regard in advising on the terms of service suitable for a unified teachers' service to the amount of money which we can afford to spend annually on education. So with these riders to our acceptance of the Motion in its amended form, I declare that the Government will support it.

MR. ROGERS: Mr. Speaker, I am chairman of this, I think, rather maligned, it is largely misunderstanding. I am chairman of this African Teachers' Service Board. This Board advises the Minister on the terms of conditions of service and employment affecting African teachers. The Board is composed of four representatives of African teachers, two of the managers of the schools employing African teachers, two representatives of local government and two representatives of the Kenya Government. It will therefore be seen by hon. Members that African teachers are themselves fully represented.

I would like to deal specifically with the code of discipline because the hon. Mover referred to the question of moral standards and it is certainly this question which is one of a certain amount of misunderstanding and will be the question of discussion later on. I have the Minister's authority to quote from the Minutes of our meeting on 31st October, 1958: "That in view of the recommendations made by various organizations of teachers and any general amendment of the code of discipline should be made in negotiation with a Colony-wide teachers' association. The consideration of possible amendments should be postponed until the Kenya National Union of Teachers has been properly established and will be in a position to send representatives to discuss the matter with

[Mr. Rogers]

This Board will then be prepared to examine further the question of amendments to the code."

I would mention that when this was recently reported to a delegation—a convention—of African teachers, that decision was greeted with the greatest satisfaction. In the meantime, the Board decided that the code of discipline should stand.

In passing, Sir, I would like to thank the hon. Member, Mr. Muliro, who has done his very best to help the Board to explain the code of discipline to teachers and the reasons behind it.

Now, Sir, I am glad to say that the Kenya National Union of Teachers is now registered and few areas still have to be brought into the fold, as it were, and it will soon be in operation. And I feel sure that we can rely on the Government to see that this National Union of Teachers is fully represented on the African Teachers' Service Board.

Now, Sir, as an employer I have spent a considerable part of my life—indeed, I feel, that perhaps a disproportionate amount of my life—discussing every matter under the sun with trade unions and I have done this for about a quarter of a century. I have never yet discussed matters with an academic trade union but I look forward to extending my experience and I know I am speaking for the Board when I say that we would welcome discussions as early as possible with the National Union of Teachers and not only on the code of discipline but indeed on all terms of employment.

Turning to the code of discipline, I feel that the hon. Deputy Director of Education has dealt with the full reasons behind the necessity for this and there is no point in going any further. I feel sure, Sir, that the House would be interested to know that the ordinary contract of a commercial firm contains the strictest rules regarding behaviour, and indeed behaviour which it not met with in normal society. Indeed, a good number of years ago I myself signed a contract which specifically mentioned drunkenness, dishonesty and general matters like that including betting debts.

AN HON. MEMBER: Shame!

MR. ROGERS: I quite agree—shame! There was no intention whatsoever, I trust, certainly in my case, to imply that I might get drunk or bet or be morally loose, and there is also no question whatsoever in our code of discipline for the African teachers in implying that they are particularly liable to those human failings, but as the Minister has emphasized, the code of discipline, in fact, gives far better and more lenient terms of employment to the African teachers than is normally the case. For instance, drinking to the impairment of one's professional efficiency. On the first offence it is a fine only. On the second offence it is six months' suspension, and only on the third is the person dismissed. I can assure hon. Members that both these offences in all fields of employment that I know, including the ordinary Government employment, dismissal would follow completely automatically. Now as the Deputy Director of Education has said, there are different grades of employment throughout our teaching service, and I would like to assure hon. Members that exactly the same applies in the field of employment of commerce and industry. We have different grades, and each one has different terms of employment. As a man moves upwards from one to another he gets the improved conditions of employment, and as I am certain in the case of Government, his place in the graded scales, which grade he is in, depends entirely on his ability and nothing else.

I would like to accept the second amendment.

MR. SAGOO: Mr. Speaker, Sir, the debate so far has been confined to the terms of service relating to the African teachers. I would like to add, Sir, that some of the disabilities which are suffered by the African teachers are shared also by Asian teachers, especially in the aided schools. As the House is already aware, Sir, in the Asian educational system, we have got the Government schools and the aided schools, which are aided, in fact, by the Government. In the Government schools I have no quarrel with the terms of service offered. But as regards the aided schools, I have said it time and again in the Budget debates, and especially on the educational vote, that there is no security of tenure given to these aided teachers. There are

[Mr. Sagoo]

no housing facilities provided. The medical facilities do not exist. Leave and passages are unheard of, and pensions and provident fund scheme are just not there. So, Sir, if some of these aided teachers, by their sheer endeavour, happen to reach a standard where they think they can get a job with the Government schools and change of service to the Government schools, their terms of service in the aided schools are not considered.

Now, Sir, these are some of the disabilities which are experienced by the aided schools, with the result that the aided schools have to put up with inferior staff and a certain amount of discontentment arises in those schools. I would like the House to bear in mind, Sir, that in the aided schools the Government's contribution to teachers' salaries is 80 per cent. It would therefore mean that if these additional facilities had to be provided some ways and means will have to be found to supplement those increased facilities. I would like to assure the House only on one point, Sir. That if the Government is prepared to increase its financial aid to the schools, then the Asian community will do its level best to supplement its own increase for those teachers. I am quite sure, Sir, in my own mind, that Asian community will welcome this amendment to the amendment proposed by the Specially Elected Member, because it will eradicate, to a very large extent, the ill-feeling and unrest that exists in the aided schools amongst the teachers. For that reason, Sir, I support the amendment to the amendment.

MR. MULIRO: Mr. Speaker, I must say I am quite thankful to the Government for having accepted this Motion as it has been amended twice. Now, in fact, as far as I am concerned, there is no difference in the amendment, except the word "discrimination" has been removed. Now what I would like to ask—the Government is this. Our Kenya Government has a habit of saying, "We accept a Motion" and doing nothing at all. We had a Motion in this House about the common entrance examination and Government said, "We are going to do something as soon as possible" and nothing has happened ever since. But this has been a sincere effort for the whole

Opposition today to have some definite agreement with the Government, and I shall be very grateful if this can be implemented in the shortest possible period.

With these few words I terminate my speech.

Question that the words of part (a) to be left out be left out put and carried.

Question that the words of part (a) to be inserted in place thereof be inserted put and carried.

Question that the words of part (b) to be left out be left out put and carried.

Question that the words of part (b) to be inserted in place thereof be inserted put and carried.

Amendment as amended before Council.

Question that the words of the original Motion to be deleted be deleted put and carried.

Question that the words of the amendment as amended be inserted in place thereof put and carried.

Motion as amended before Council.

Question put and carried.

MOTION

CONTROL OF OPTICIANS AND AUXILIARIES

MR. BOMPAS: Mr. Speaker, Sir, I beg to move that this Council urges Government to set up a committee or committees to examine—

- (a) the desirability of introducing legislation similar to that now existing in Great Britain for the registration and control of opticians; and
- (b) the necessity, or otherwise, to register and control medical auxiliaries such as physiotherapists and radiographers.

Sir, this Motion varies very slightly from that of which I initially gave notice, and, as is noted on the Order Paper, was amended, Sir, with your consent. That amendment was only the inclusion, in the second line, of the words "or committees". I felt it was desirable to make that minor alteration because obviously, the wide variety of medical auxiliaries who had to be considered, could well necessitate more than one committee functioning in respect of any examination.

[Mr. Bompas]

Sir, a very casual glance around this Council is sufficient to establish the part which spectacles play in the lives of so many of us. I make bold to say, Sir, that for that reason alone, this Motion could well have been elevated to a Motion of National Importance. Sir, with all respect to yourself and to the three hon. Members who preside with so much dignity over our deliberations from time to time, one wonders whether indifferent eyesight is not an occupational hazard of chairmen. Sir, spectacles were probably invented by Roger Bacon in the 13th century, and a charter was given to the Worshipful Company of Spectacle Makers in 1629. It was only, however, during the last 60 years that examining bodies, and protective organizations for controlling the optical professions, came into being. In fact, it was of that period that the following story could be told. A story of what one can regard as the "the bad old days", of the son who asked his father, who was an optician, how he would know what to charge for spectacles, and the father, who was training him said, "Well, when the customer asks what the price is, the answer is £2 2s. and if he does not flinch, you quickly say 'per lens'. If he still does not flinch you say 'plus £1 for the frames'". Sir during that period, repeated efforts ensured to secure some legislative control over eye testing, prescription and the actual making of spectacles. And it was only in the middle of 1958 that the Optician's Act of that year was passed in Britain. This circumstance, Sir, determined the East African Optical Association that the time was opportune to seek the introduction of controlling legislation in Kenya, although not necessarily nearly so complex or so detailed as the British Act.

The Optical Association, Sir, sought support from the Association of Surgeons of East Africa, and after full discussion by the Council of that Association of Surgeons, all present expressed their full agreement and sympathy. The proposition was then placed before the Council of the British Medical Association (Kenya Branch), which wrote on 17th July, 1959, as follows—if I may very briefly quote, Sir: "Council fully supports the efforts of your association to register opticians as a protection for the public from those who are both unquali-

fied and incapable of doing the work of a qualified man. My Council felt that the principle was a sound one and should be applied to all medical auxiliaries, such as physiotherapists and radiographers, as well as opticians." That is the end of the quotation, Sir, it is, of course, at the instance of the East African Optical Association with, as I have shown, the full support of the medical profession in East Africa, that I have brought part (a) of the Motion.

Part (b), of course, stems from the opinion expressed by the Kenya Branch of the British Medical Association in the quotation I have just read. Sir, in addition, in Committee of Supply on 29th May, 1959, the hon. Nominated Member, Dr. Adajja, said that medical auxiliaries, such as laboratory technicians, radiographers, physiotherapists and others were doing a fine and an essential job of work. But he added, and I quote, I am quoting from HANSARD, "But, they are likely to degenerate into quacks if there is no control over them." That is the end of that quotation, and he concluded, Sir, by saying: "I see no reason why these medical auxiliaries should not be controlled." In his reply, the Minister expressed his interest in the remarks of the hon. Nominated Member, and I am aware, Sir, that the Medical Department has been examining the possibility of drafting legislation to control medical auxiliaries, and too, has been in consultation with the East African Optical Association, with a view to their members training senior dressers and sub-assistant surgeons to do quite simple refractions. Sir, I suggest, this matter is very much more urgent than it would superficially appear to be, and I believe, Sir, that the Medical Department requires the impetus of a Motion by this Council and the reinforcement of its own efforts by a committee, or better still, as I said earlier, by committees—one, for optics, and the other possibly for medical auxiliaries, such as physiotherapists.

Sir, I believe, too, that there are many private practitioners who would be very ready to serve on such committees, and to assist the Medical Department, and there is, of course, a very substantial volume of guiding evidence available from British professional bodies, including Lord Crook's Report of 1952 upon the registration of Opticians as being in the

[Mr. Bompas]

national interest. If it be thought the fact that there was a 60-year time lag in Britain suggests a lack of urgency, let me say first of all, that such a delay was quite unwarrantable, and second, that the need in a population which is accustomed to take its troubles to the local general practitioner—the family doctor—or even to the panel doctor—doctors who could spot disease—was far less pressing than is the case with our much less sophisticated population and much more gullible population. Sir, there are in this country a large number of eye diseases which are particularly prevalent among the African population. There is trachoma, which is highly contagious, and which, if neglected, can result in permanent scarring of the cornea, and possible blindness. Early diagnosis is essential to a complete cure. There are leucoma and cataract, both of which can be relieved by operation. There is glaucoma, which can give rise to very serious consequences indeed, and there are a large number of other disorders. Mr. Speaker, if sufferers from poor vision go to unqualified practitioners, they run the risk of being fobbed off with inaccurate diagnosis, and the risk of possible eventual damage to their eyesight. But far more important, Sir, if the cause of that bad eyesight is disease, then in some instances they remain a menace to their fellows. I believe, Sir, it is most important that we should create a situation, as quickly as possible, where anyone who is suffering with eye trouble, is channelled through a properly organized and properly trained series of opticians, who can either carry out an accurate refraction and dispense suitable glasses, or can recognize, without necessarily an actual diagnosis—who can recognize disease—or even be suspicious of disease, and can make sure that those patients are passed on to an ophthalmic surgeon for actual treatment.

Sir, the case that I have tried to make for opticians is equally valid, by analogy, for the other medical auxiliaries. There is no need for me to burden the House therefore, with any detail in respect of those medical auxiliaries. Sir, I recognize that there are acute difficulties in providing services far away from the towns. That, Sir, I suggest, would be a task for the committees which I am seeking to

examine. It may be possible that a considerably lower standard than one would accept, or expect, in Europe can be set for the persons who are to be registered to carry out work in the field. In any event, Sir, I am not asking Council to take any momentous decision, but merely to urge the Government to set up committees to examine these matters. Sir, there are in this country, a fair number of unqualified practitioners, who have nevertheless, from a very wide experience, given most devoted and effective service to the community, and if control is to be introduced, it would be proper and desirable to provide that suitable persons could be given some form of local registration, which would allow them to continue to serve the public. Precedents for that type of local registration already exists in a number of professions.

Finally, Sir, I cannot close without a tribute to the doctors of this country. I believe that we are blessed in this country, endowed with specialists and general practitioners, both in private practice and in the Government service, of a very high standard of skill. Let us see to it, Sir, that the medical auxiliaries of all kinds who, after all, are the handmaidens of those doctors, are controlled and protected by the sanction of law, that they may be proud and worthy complements to the medical profession.

Sir, I beg to move.

SIR ALFRED VINCENT seconded.

Question proposed.

SIR ERNEST VASEY: Mr. Speaker, Sir, Speaking in the hope that it will be possible to take a vote and get this Motion passed this morning, I will confine my remarks to saying that a long experience of this country and a period of time when I was Minister for Health, leads me very strongly to support the remarks made by the hon. Member for Kiambu in putting forward this Motion.

DR. ADAJJA: Mr. Speaker, Sir, I want to say just a few words. I am in complete agreement with the intention behind this Motion. It is my opinion, Sir, that the absence of control over medical auxiliaries, are inclined to exceed the limitations imposed by their training and sojourn into a wider field of medical diagnosis and treatment.

[Dr. Adajia]

Sir, when I say this, several cases come to my mind. A few recent ones I might mention before this House. A patient of mine, suffering from a long standing diabetes, had his vision diminished. He found he could not see as clearly as he was seeing before. He went to a so called optician. I use the words "so called" because I am not quite sure whether he had any training whatsoever. The optician fitted him with glasses which did him no good except that he was relieved of the burden of a few pounds from his pocket. In course of time he came to me and on examination it was found that it was the diabetes that was responsible for the diminution and not the need for glasses. Luckily it was not too late before he went to the practitioner and something was done for him, and to my great satisfaction, the patient is improving, but if he had not come in time I am sure the condition would have worsened, and would have gone to the extent of leaving him blind or near blind.

Similarly, Sir, there are cases where people with pain in the legs or elsewhere go to a physiotherapist, and the condition that is responsible for these symptoms might be as bad as a malignant growth. This has not been detected at the right stage, and when the patient happens to go to a qualified medical practitioner it becomes too late. I remember of such a case too.

Quite often a patient comes to me and says he is coughing and losing weight, and when I suggest to him that he should have an X-ray done and investigations done, he just produces from his pocket an X-ray picture of the lungs or a picture of something, which means nothing. All that has happened is that he has lost valuable time.

Sir, these are the few cases I would bring before the House to show the need for control of these medical auxiliaries. I am sure, Sir, the control of medical auxiliaries will do good, not only to the patients but also to the auxiliaries themselves. At the moment anybody can set up practice and call themselves a physiotherapist, a radiographer or an optician. This in the absence of any training, is not only a danger, but it is providing competition against trained people. People who have

spent time and money and undertaken proper training. Now, with control, this competition which cannot be justified, and will go, and what is more these auxiliaries will come to acquire a status. At the moment in the eyes of the public these auxiliaries are just somebody to whom one could go for certain things. They have no status of their own at all, and with the establishment of control that status will come in and I think that will be to their advantage. So, Sir, I would like to repeat that I am in favour of broad principles behind this Motion.

Sir, before I sit down I would like to say two things. The hon. Mover has spoken about local registration of people who have been in practice for some time. While I would not mind local registration of people who are in practice for some time, and who are getting their living from it only. But there are quite a number of people who have taken this up as a side line, who do it in their spare time, and who have no training and no experience; they just do it as a side line. I would not be in favour of locally registering these people who are not trained in any way at all.

Before I sit down I would like to express my grateful thanks to the hon. Mover for the words of praise he has mentioned for the medical profession in this country. Sir, praise these days is hard to come by, and when the praise is given it is certainly an encouragement. I thank him once again.

MRS. HUGHES: Sir, I just wanted to add very briefly—

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I am afraid I cannot allow further speakers today. It is past the time for adjourning.

DR. WALKER: Mr. Speaker, Sir, I also would like to speak.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): In that case I will adjourn Council, but before doing so I believe Mr. Coutts wishes to make an announcement.

BUSINESS OF COUNCIL.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, Sir, I said earlier today that after consultation with you I would like to inform hon. Members regarding business for next week. It is obvious to

[The Chief Secretary] me that in view of the way in which business has gone during this week that we will have to have a full meeting on Tuesday in order to deal with a number of matters, including the Second Reading of the Vagrancy Bill and the Second Reading of the Stamp Duty Bill. We will sit, therefore, Sir, for a full meeting on Tuesday, and I would also like hon. Members to be prepared to sit for a short time on Wednesday morning. I would suggest meeting at 9.30 a.m. in order to deal with outstanding business before Christmas, so that when we meet again in the new year we will meet with an entirely new agenda, and if hon. Members are prepared to do that I would like to meet for a very short time on Wednesday morning at about 9.30 a.m.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): The time has passed at which we adjourn, and I therefore adjourn Council until 2.15 p.m. on Tuesday, 22nd December.

The House rose at thirty-four minutes past Twelve o'clock.

Tuesday, 22nd December, 1959

The House met at fifteen minutes past Two o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

QUESTION No. 30

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Mr. Muimi, Mr. Coutts has been called to Government House and will not be back until about 5 p.m. and I propose, if you are here, to take your Question at 5.30 under the present exceptional circumstances of which you are aware.

MR. MUIMI: Thank you, Sir.

QUESTION No. 47

MR. NGALA asked the Minister for Education, Labour and Lands:—

(a) Is the Minister aware that parents had to buy school equipment, i.e. exercise books, text books, pencils, etc., as a result of a five-month delay (January to May, 1959) in the supply of such equipment in the Southern Division of Kilifi District?

(b) What arrangements are being made to ascertain that school equipment reach all schools punctually at the beginning of the first term every year?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson):—

(a) No, Sir.

(b) I am satisfied that the District Equipment Scheme introduced this year will ensure the prompt arrival of supplies.

MR. NGALA: Mr. Speaker, Sir, arising from the reply to (b) will the Minister be kind enough to explain the system and tell us how it will be implemented.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, in the past individual managements used to order their equipment directly from overseas and consequently delays in supplies were apt to arise. In the future

[The Minister for Education, Labour and Lands] there will be a scheme embracing the entire district and the Department will ensure that adequate and timely supplies are made available to the managements.

MR. COOKE: Mr. Speaker, I thank the hon. Minister for his reply, but if, in effect, the people had to buy the books, should not the money be refunded to them by the Education Department?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I have no evidence, Sir, that parents had to buy books.

MR. COOKE: But the Member for Coast Rural—(Interrupted.)

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): All the available evidence, Sir, leads to the contrary conclusion.

MR. COOKE: The hon. Minister just now said he had no evidence, and now he says "all the evidence available". It does not sound to me very good.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): May I point out to the hon. Member, Sir, that my reply to his first supplementary question was to the effect that I had no evidence that parents had to buy school equipment. All the evidence available to me in fact pointed in a contrary direction. I do not see the hon. Member has any complaint to raise.

MR. MBOYA: Mr. Speaker, would the Minister promise to investigate this in view of the fact that the Member for the area has made this statement to the House?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I have investigated it, Sir.

QUESTION No. 48

MR. NGALA asked the Minister for Education, Labour and Lands:—

- (a) Is the Minister satisfied with the Domestic Science facilities provided to girls attending as day pupils at St. John's School, Kaloleni, Jilore Intermediate School, Kigombo Intermediate School and Mazaras Intermediate School in the Coast Province?

(b) If the reply to (a) is in the negative, what steps does the Minister intend to take to provide proper facilities for the teaching of Domestic Science in such schools?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I am not entirely satisfied and appropriate action is being taken to improve the position.

MR. NGALA: Arising out of that reply, Sir, would the Minister explain what action, appropriate action, will be taken?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): By advice to the Managements.

QUESTION No. 50

THE SPEAKER (Sir Ferdinand Caven-dish-Bentick): Air Comm. Howard-Williams, I note that this Question is also addressed to the Chief Secretary and, therefore, I will also take this Question at 5.30 p.m.

QUESTION No. 53

MR. KHAMISI asked the Minister for Education, Labour and Lands what steps is Government taking to provide—

- (a) an African girls school for Mombasa area, and
(b) an African day secondary school for Mombasa area?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): There is no evidence that, in recent times, any African girl in the Mombasa area, of suitable age and qualifications, has been unable to obtain a place in one of the existing schools and there are, therefore, at present no plans to provide a school specifically for African girls in the Mombasa area. It is, however, hoped that an African day secondary school will be provided during the 1960-63 Development Period.

MR. NGALA: Mr. Speaker, arising from that reply, in view of the Muslim law which requires girls to be separate from boys at the age of five or so, would the Minister state whether he could undertake to make suitable provision for the education of Muslim girls in Mombasa?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): We will certainly bear this thought in mind in framing future development plans.

QUESTION No. 55

MR. NGALA asked the Minister for Education, Labour and Lands:—

- (a) How many Africans so far have been promoted to the post of Field Education Officers?
(b) Will the Minister give the breakdown of the names of the Field African Assistant Education Officers according to the provinces and mention the date on which each was appointed to the post?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): There are at present four African Education Officers engaged in the administration and inspection of schools. I will write to the hon. Member about the number of African Assistant Education Officers employed on similar duties when I have obtained information from the provinces.

QUESTION No. 57

MR. BLUNDELL asked the Minister for Education, Labour and Lands is Government aware of the unsatisfactory position in regard to occupation and development of business plots and premises in Coryndon Street, Eldoret, due to racial restrictions in the leases granted by Government?

If the answer is in the affirmative, will Government state what steps it has taken or intends to take to allow non-European plot owners to occupy and develop premises erected on their plots when the terms of the lease cannot be carried out due to the inability of the plot owners to find European tenants and occupiers?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Yes, Sir. The Government is aware of the unsatisfactory position and does not intend to enforce any racially restrictive covenants or conditions included in grants or leases of Crown land in Coryndon Street. I should be surprised if, in the present climate of opinion, other plotters in Coryndon Street would wish to prevent the occupation or development of the street as described in the Question.

MR. NAZARETH: Does the Minister think it right to assist other plotters and those occupying premises to obtain

the benefit of the new policy of Government not to enforce these restrictions?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): That is a somewhat wider policy question than arises in the original question.

MR. BLUNDELL: Has the hon. Minister sought to achieve unanimity with the plotters in Coryndon Street with a view to erasing the restrictions voluntarily?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I have offered to do so through the good offices of the Commissioner of Lands but the professional advisers of those interested in this redevelopment have prepared in the first instance to initiate consultations themselves.

MR. COOKE: This Question should have been asked ten years ago.

ADJOURNMENT MOTION

UNDER STANDING ORDER NO. 12—
NAIROBI DISTURBANCES

MR. BLUNDELL: Mr. Speaker, I beg, under Standing Rule and Order No. 12, to move the adjournment of the Council for the purpose of discussing a definite matter of urgent public importance to do with the recent troubles in Nairobi.

MR. SLADE seconded.

THE SPEAKER (Sir Ferdinand Caven-dish-Bentick): On such evidence as has come to my ears I would say that the matter to which you refer can be considered a matter of "urgent public importance" but, of course, in addition to that, not less than. If Members have to rise in their places to support your Motion, that being the case, I shall take this Adjournment Motion at 5.30 p.m.

BILLS

FIRST READINGS

The Preservation of Public Security Bill
Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Detained and Restricted Persons (Special Provisions) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

BILL

THIRD READING

The Hospital Treatment Relief (Asian and Arab) Bill

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (MR. HAVELOCK): Mr. Speaker, I beg to move that the Hospital Treatment Relief (Asian and Arab) Bill be now read a Third Time.

THE MINISTER FOR LEGAL AFFAIRS (MR. GRIFFITH-JONES) seconded.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): Before putting the question I would say that I have communicated the decision of this Council on the report of the Committee of the whole Council to the Chairman of the Council of State in accordance with our Standing Orders.

Question proposed.

The Bill was accordingly read the Third Time and passed.

REPORT

The Local Government (County Councils) (Amendment) Bill

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (MR. HAVELOCK): Mr. Speaker, I beg to move that the Report of the Committee on the Local Government (County Councils) (Amendment) Bill be adopted.

THE MINISTER FOR LEGAL AFFAIRS (MR. GRIFFITH-JONES) seconded.

Question proposed.

The question was put and carried.

THIRD READING

The Local Government (County Councils) (Amendment) Bill

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (MR. HAVELOCK): Mr. Speaker, I beg to move that the Local Government (County Councils) (Amendment) Bill be now read a Third Time.

MR. WEBB seconded.

Question proposed.

The Bill was accordingly read the Third Time and passed.

BILL

SECOND READING

The Vagrancy Bill

Resumption of debate interrupted on 17th December, 1959.

MR. NGALA: Mr. Speaker, Sir, when the Council arose the other day, I had just finished pointing out that as far as this Vagrants Bill was concerned, the Government has, in my view, completely failed to meet the problems of the so-called vagrants.

Now, Sir, this Bill—instead of the Government coming forward with a Bill that would make it possible to create secondary industries or make land available for these people, so that they can get useful occupations in industry and also in cultivation, the Government here is bringing a Bill which is just going to move jobless people from one area to another without providing any occupation in the other area. This, I think, will be a circulation of the jobless people and a very expensive circulation too. One example, Sir, within my experience, I have seen people going into Mombasa genuinely looking for work and they are moved to places like Kilifi or places like Kwale and then the police take the trouble to move these people which, as pointed out already, is a very expensive affair and this is repeated so many times in a week that the poor taxpayer cannot stand it. Why spend all this money in clearing out a Bill which is so unnecessary? I think efforts should be directed in providing jobs for the people and in making land available for the people so that they can be usefully occupied.

The question of a genuine beggar, Sir, is not met in this Bill. It must be understood that Government has not provided assistance to beggars who are genuine, and since Government has not provided a genuine alternative solution to the beggars, I feel that section C on the first page should not be there. Throughout the country we have seen that the beggars include some people who are cripples, some people who are incurables and would like to earn their living in other ways but they cannot for reasons that are well understood. It is not through their own fault, therefore these people must live, must beg, must get something and to bring a Bill of this kind to the

(Mr. Ngala)

House would deprive the beggars of their livelihood and I think is quite improper and quite unfair.

Mr. Speaker, Sir, the other day when we were showing our fears over this Bill—our fears that this Bill was another form of continuing the Emergency regulations to normal life after the Emergency, the Chief Secretary denied that this was not the idea. We emphasized that we thought that this was a genuine suspicion on our parts, but the Chief Secretary again emphasized very strongly, Sir, that that was not the intention of the Bill. But the reported talk by the Colonial Secretary in the Nakuru Area has even made our suspicion worse today. If I might quote, Sir, the Colonial Secretary is reported to have said, "I say provisions were to be introduced in relation to the Vagrants Act which would be of some assistance here. Of course, if the position gets very difficult indeed, it is always possible for the Governor under the new Bill to introduce Emergency regulations."

Now this is the expression of the suspicions and fears that we expressed the other day, Sir, and it is for these fears that we feel that we cannot accept this Bill because it is another backdoor introduction of Emergency regulations, or a continuation of the Emergency rules.

Mr. Speaker, Sir, I would like the Chief Secretary to explain the difference between him and the statement that is reported to have been issued by the Colonial Secretary, because now I am put in a very difficult position. I do not know who to believe.

The question, Sir, I think this Bill, Sir, is one that should have been put off by the Minister for Legal Affairs, particularly in view of the present Vagrants Bill which is being used in many places. I do not see the situation could be such that would demand another Bill or even another infringement of the existing law.

With these few words, Sir, I hope the Minister for Legal Affairs, bearing in mind what other Members have also put to the Government, will withdraw this unfair Bill.

MR. COOKE: Mr. Speaker, I have been listening, Sir, to this debate patiently, and my opinion is that it is not so much against the Bill that the protests have

come but the way the Bill may be administered.

As the Chief Secretary said, the Bill has been in being for many years now, but everything depends upon the way the Government administer the Bill. If they are going to do it in a ruthless and unsympathetic manner, I would join with the African Members in a strong protest and vote against the Bill, unless I get an assurance from the other side that they will see that this Bill is administered impartially and that it is administered fairly. There is a lot of good in the Bill and it can control a lot of uncontrollable elements at the moment, but there is a great deal of bad in it as well if it is to be left to the tender mercies of Government minor servants. There is an old saying, Sir, by the poet Pope.

"For forms of Government let fools contest

What'er is best administered is best"

and unless I can get an assurance that it will be fairly administered, I shall vote against this Bill.

MR. OBIINGA: Mr. Speaker, Sir, this Bill is one of those outcomes of some of the mistreatments which we have from time to time expressed in this Council to the Government I remember at one time. Mr. Speaker, we said that the mistreatment which the Africans get in the reserves is not at the present moment helping them to settle quietly and do their business or develop their own business in the African Land Unit. It is only helping them to migrate to other territories, and also into the towns where they feel that probably the treatment is a little bit—not so severe as what they experience in the African reserves—and as a result the Government is now realizing their folly in the results, and now they are beginning again to find or to devise a means of repatriating them again back to the reserves. I think this method will only be going forward and backward and there will be no end to it. We had warned—and I remember that when we first came to this House—we said that the present treatment in the reserves is only keeping the Africans busy for nothing. I remember I said such a thing in this Council here. It is only that they are kept busy for nothing in the reserves, and as a result many of them are leaving the reserves. I know

BILL

THIRD READING

The Hospital Treatment Relief (Asian and Arab) Bill

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MR. ODINGA: Mr. Speaker, Sir, this Bill is one of those outcomes of some of the mistreatments which we have from time to time expressed in this Council to the Government I remember at one time, Mr. Speaker, we said that the mistreatment which the Africans get in the reserves is not at the present moment helping them to settle quietly and do their business or develop their own business in the African Land Unit. It is only helping them to migrate to other territories, and also into the towns where they feel that probably the treatment is a little bit—not so severe as what they experience in the African reserves—and as a result the Government is now realizing their folly in the results, and now they are beginning again to find or to devise a means of repatriating them again back to the reserves. I think this method will only be going forward and backward and there will be no end to it. We had warned—and I remember that when we first came to this House—we said that the present treatment in the reserves is only keeping the Africans busy for nothing. I remember I said such a thing in this Council here. It is only that they are kept busy for nothing in the reserves, and as a result many of them are leaving the reserves. I know

[Mr. Odinga] that when they are taken back to the reserves without adequate provision for duties to do in the reserves, still the trouble will just carry on. There will be trouble still in the reserves, and I do not see how the Government is going to avoid, or to get rid of it. Maybe, Mr. Speaker, we might temporarily only manage or succeed in stopping water when the water is flowing, but immediately it becomes more and more and gets a bigger force, it will always break whatever fort we build in its way, and therefore we might be with this—with the present Bill—we might be at this time to console ourselves that we are doing a service to the country, or we have got something to stop the trouble which might come. Well, it may be only temporary, but I am asking the Government, is this really going to help, because a man, whether you declare him today a vagrant, as somebody has already expressed on this side—he must eat. Wherever you take him to he will have to eat, and to eat he needs to get the means by which he can actually earn his own living, and to take him back to the reserves will not help him if he has not got some employment in the reserves. To put it vaguely that probably land consolidation and all these things will create opportunities for employment is really quite out of point, and that will not work.

Now, another thing, which is a problem in the African reserves is that there are far too many restrictions—far, far, too many restrictions in business—which cannot allow the business development to carry on, and business development—if the African created a lot of them—this could also give way for employment for some of the people, who would actually come to wander about in the towns. At the present moment with these restrictions you can hardly develop a business in the reserves. You cannot possibly do it.

Now, Mr. Speaker, many points have already been raised by my hon. gentleman from this side, and I need not repeat them at all. What I have to say is that this Bill, if it is made law and rushed through at this time, I do not think that any thinking African would really be able to support it because we know what its application will be. What we are told here is quite different from

the application of the whole Bill, and as a result I will just, Mr. Speaker, move under Standing Order No. 86, that this Bill be read a Second Time six months from now, and by its postponement, Mr. Speaker, I feel that we should give the Government time again to think and think very deeply and try to find other ways of stopping the increase of vagrants in this country. We know that you cannot altogether stop them, because even in the most civilized countries you will still have vagrants. Even in places I have toured in some countries, I have found thousands of people who actually live in the station. You will find that you get to the station platform and there are thousands of people, living there and cooking their food and they have no homes at all. There are places like that. And we know that these problems will come. When the present arrangement, with the present restrictions, with the present attitude of the Government, the vagrants will increase in this country, and I think that the Bill as it provides today will not really help anything, but will only create more bitterness and it will probably give trouble to the police unnecessarily. We should avoid unnecessary trouble from the hands of the police or the Government. As a result, Mr. Speaker, I beg to move this amendment to the Bill.

MR. MUMBI: Mr. Speaker, Sir, I beg to second the amendment moved by the hon. Member for Central Nyanza.

Mr. Speaker, listening to what the Minister said about this Bill, and the speeches from the opposite side of the House, one would have implied that the reason for introducing this Bill was to rid the country of the so-called habitual vagrants, or in other words, the spivs. But as it now stands, Mr. Speaker, it is quite evident that this Bill proposes to do more than this.

Many speakers on this side have told the Government the fears that the Africans have as a result of the introduction of this Bill. I personally, Mr. Speaker, would like just to mention one or two things, I feel, in the first place, before Government introduced this Bill they should have considered the types of vagrants that they have to deal with under this Bill. To my best knowledge, Mr. Speaker, I feel that I could divide the so-called vagrants as defined under section 2 of the Bill into three classes.

[Mr. Mumbi] The first class of vagrants as mentioned in subsection (c) of section 2, namely "any person wandering abroad, or placing himself in any public place to beg or gather alms, or procuring or encouraging any child, or children so to do, etc." Well, this problem of the vagrant of the kind mentioned in section (c) does not only appear in big places like Nairobi, but even in small towns. You find this kind of vagrant. For example, if you go to small towns, I might say, like Thika, or Kitui, for that matter, you find there are certain blind women who have no support from anybody and you find them roaming about the town led by young children looking for any help from anybody. Surely these people—Government should have some sympathy for them and introduce some sort of a scheme for them, as I have seen in other countries. I feel, Mr. Speaker, it is a duty of any state to look after these people, and the mere fact that you can take them away from places like Nairobi and send them to whatever may be their place of origin, does not help them at all. I remember sometime ago my African district council did try to provide some sort of a scheme for these people, but it was not long when the African district council found it could not cater for the many such people coming into this kind of scheme, and I feel it is very essential that Government should take this responsibility and establish some form of a scheme, if necessary, in every district, so that these people who are blind or incapacitated in some way or another, are cared for and they do not become a nuisance to the public.

Secondly, Mr. Speaker, is the habitual kind of vagrant. It has been suggested in this House that the way to deal with these habitual vagrants—the way to try and check on them—is in the first place to give them these plain cards, so that anybody who can show a card from the Labour Department, as a work seeker, would be free from molestation. I feel, Mr. Speaker, some of these habitual vagrants are very educated people. They are very clever people, and all that they need do is to get these cards and they can do all sorts of things. I think the fact must be faced that in order to rid the country of this kind of vagrant it is necessary that they must be found some

sort of occupation, and I was going to suggest, Mr. Speaker, that as far as practicable, there should be liaison between the Government and the local authorities, especially in the rural areas where such people, if they are returned, and I have seen many of them, can be found some work. If they are not I am just wondering, Mr. Speaker, if Government intends to make the African rural-areas the vagrant pounds where you take these people and hand them to the district commissioner and the district commissioner hands them to the chief, and the chief to the headman and so on, and they are left in the country without any occupation or anybody to look after them. No wonder these people come back to the towns and they become more of a nuisance in the African areas than the Government visualizes today, and I can tell Government that many of the serious cases you hear of in the reserves; I put a question the other day and the Minister concerned replied that there were already 20 murder cases in the district are the result of some vagrants being returned to the African reserves from the towns. I was listening to find out if any connexion would be found between the people returning from the towns and these murders, and nothing of the sort. I can tell you, Mr. Speaker, that not only these murders but many of the robberies you hear of in the country, many of the most uncalled for acts, are being performed by these vagrants, and the countryside is getting worried as to what the Government is doing in order to protect the people, not only in the urban areas but also in the rural areas.

Lastly, Mr. Speaker, the third kind of vagrant I have in mind is the work-seekers. Surely there is no work in the country, I must say this. It is not only in Kenya where you find people going into towns to look for work but history has proved that it is natural for people when the towns develop to flock into towns, otherwise without the people you cannot have the towns. Therefore, Mr. Speaker, I feel that Government should not have introduced this Bill at this stage without offering an alternative as to the so-called work-seekers. What are they going to do, after all, if they are returning to the African areas? Will that solve the problem of their getting work? Will that stop them from coming back? I

[Mr. Muimi]

say, Mr. Speaker, that it is not the truth; the truth is that some form of work must be found, not only in the towns but also in the rural areas. I am sure, Mr. Speaker, that with the experience I have there is sufficient work for most of the people in the country. For example, I am aware that in many districts there are development schemes going on and instead of taking these people and leaving them jobless in the African areas they should be taken to these schemes and made to earn their living, because if they have no work they will be the more nuisance to the people in the country.

With these few words, Mr. Speaker, I beg to second the amendment.

Question proposed.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): Any Member who has already spoken in this debate must confine any further remarks strictly to the proposed amendment.

MR. KHAMISI: Mr. Speaker, I beg to rise to oppose the Motion before the House and to support the amendment. In doing so, Sir, I should like first of all to inform the hon. Mover who tried his level best to tell us when moving this Motion that this Motion is not discriminatory. Sir, as we all know, a Vagrancy Ordinance was in existence and is in existence in this country for the last 34 years and up to now, Sir, the Vagrancy Ordinance in use has been very discriminatory in that it is only the Africans who have been arrested on the streets while they were looking for jobs and while loitering about in the townships. I have not from my own experience seen anybody else who is not an African who has been arrested and charged before the courts as a vagrant. I do not believe in this new Bill that anything will be altered. It will be just as it was before, that is, Sir, the sufferers will mostly be Africans. Therefore it is quite safe for us to say that this Bill is as undiscriminatory as many other Bills which have come before this House.

Now, Sir, the second reason why I would like to oppose this Bill and support the amendment is—

MR. BECHGAARD: On a point of order, Mr. Speaker, did you not rule that hon. Members should speak to the amendment only?

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): My ruling referred specifically to Members who had already spoken. Mr. Khamisi has not yet spoken and can therefore explain his attitude to the question.

MR. KHAMISI: The next reason why I would like to oppose the original Motion and support the amendment is because the Bill by itself is a negative Bill. It has not gone to the extent of trying to solve the problem of vagrancy in this country. All that it does is trying to remedy the position casually by saying that the people should be removed from the towns and sent to the reserves. It is for that reason that the Government seems not to have thought very much about this Bill at all. They have thought of partial remedies while what is necessary and very essential in this case is to find the remedy to cure the disease of vagrancy which we all know is rampant in this country.

Now, let us look for a moment at who is a vagrant. Generally it is the work-seeker, the man who lives in the reserves; after he has tried to live on his land by subsistence farming or by other means, and finds that he is unable to live in the reserves and that he has got to go and look for employment in order to meet his essential needs in this world. Now, a man goes to a town like Nairobi, Nakuru or Mombasa, and there, for several days, wanders about from office to office or from industry to industry looking for employment. Now, generally he lives by charity which is offered to him by relatives or friends. Now, this man, before this law, before the eyes of the Government is a vagrant. He has to be arrested according to this Bill and sent back to his home. Now, Sir, here is a man who has tried his level best instead of going to mischievous kinds of enterprises to go to towns to look for employment and he is told that he cannot look for employment; he has got to go back to his home. Government must therefore take the responsibility of seeing that when he goes back to his home he is catered for; that is, that Government should make some arrangements, suitable arrangements, to see that the man is able to live properly in his reserves. I am quite sure that very many people would not come to towns if they had no need whatsoever to obtain the necessities of life. Now, therefore

[Mr. Khamisi]

the Government must go down to the roots of the cause of vagrancy. If they want to remove this disease they must not do it casually by just sweeping the towns and returning the people to the reserves and leaving them in their plight with no means of livelihood. It is for that reason that I feel there is something basically wrong with this Bill and therefore I support the amendment so as to give Government the time to think in six months' time what plans they have in conjunction with the Motion which they have approved only a week or two ago to be able to provide wholesale employment and to provide means of allowing people to be able to earn their living.

Now, Sir, last week the hon. Nominated Member on that side, who is unfortunately not present this afternoon, suggested that such a Bill would be needed particularly in a place like Mombasa where he suggested there were so many prostitutes and pimps who should be arrested on account of this Bill. If you look at the definition of a vagrant, according to this Bill, there is no provision at all for such people to be included in this definition. You cannot say that these people or these types of people have not got any reputable employment since they are paying taxes to the Government. The Government is demanding that they must pay their taxes, therefore the Government must admit that they have got reputable employment. In any case this Bill would not be applicable to such types of characters in towns.

Now, the other provisions of this Bill and the definitions of a vagrant need to be very carefully scrutinized before this Bill becomes law, because it appears that as it is I do not see there will be any improvement on the existing Bill, and since the existing Bill has worked very nicely and I say not very impartially because I know of cases of people who are lame and not able to work, sitting in the streets of Mombasa, who have been arrested and sent before magistrates, only to be given a fare to return to their homes. Now, where are their homes? Their homes are only within the Mombasa District and therefore they are removed from Salim Road and returned to Jomru which is very ridiculous. Also there are cases and there have been cases where people from the mainland north

and south of Mombasa have been arrested in the town and charged under this Vagrancy Ordinance and sent back to their reserves, and the reserves are only a ten cent ferry fare from the island to the mainland, which again it is very ridiculous.

I feel, Sir, that Government does not seem to know what they are doing unless of course they are going to tell us, which they do not want, that this Bill is a result of the lifting of the Emergency Regulations. If the Government had come out very plainly to tell us, "Here, gentlemen, we are going to remove the Emergency Regulations and therefore we want a Vagrancy Bill which is more suitable than the old one, the peacetime Vagrancy Bill" then we would have considered this Bill in the light of those circumstances. We feel that even if that is the reason, which we suppose it is, then the Government has no case because since the Emergency is coming to an end naturally all the Emergency Regulations and restrictions must equally be abolished and the old peacetime Vagrancy Ordinance should stand as it is. Then, after it has been proved that it is out of date, that would be the time to come to this House and make such amendments that are acceptable and suitable.

With those few remarks, Mr. Speaker, I beg to support the amendment.

MR. NAZARETH: I beg to oppose the amendment and support the original Motion.

I accept the assurance of Government that the intention of this Bill is to improve the Vagrancy Ordinance and that there is no intention on the part of Government to introduce Emergency legislation by the backdoor. That charge has been made against the Government at an early stage of the debate and I fully believe that there is no substance in it.

This kind of legislation is obviously and plainly needed. There has been a tendency to argue as if we were introducing something entirely new. Actually, as the Memorandum of Objects and Reasons states, and as the Minister stated when he proposed the Motion, this Bill replaces the Vagrancy Ordinance which is as old as 1920, so that it is not in the nature of introducing something

[Mr. Nazareth]

completely new, introducing entirely new legislation. This legislation merely improves existing legislation. The real question before the House is, is the present Bill a better measure than the one which at present operates? On that point, anyone who compares the Ordinance now in force with the Bill which is sought to be passed, anyone who compares the two will have no real doubt that although this Bill does have certain defects, it is nevertheless a considerable improvement on the Vagrancy Ordinance.

It has been suggested that before this Bill is passed, Government ought to introduce measures or have plans to assist persons who are out of work. That, of course, is an entirely different thing. Everybody sympathizes with that desire, everybody hopes that Government will do as much as it can to assist people who are unemployed, but such a matter can hardly be included in the Vagrancy Ordinance. The object of the Vagrancy Ordinance is to remove persons who are tempted to commit crime from centres in they have greater opportunity to commit those crimes. If they are sent back to their reserves there will be less temptation, they will be more within sight of help, and such a measure, therefore, definitely tends to reduce crime without increasing hardship on those persons who have no work.

This kind of legislation necessarily suffers from two kinds of defects or difficulties. The definition is vague and difficult to administer. That is one kind of difficulty from which legislation of this kind suffers. The other is the danger of abuse of powers given to persons who have to administer the Ordinance.

Now, I took the opportunity at the weekend to look up the definition of "vagrant" in English legislation. I find it is stated in Malsbury's *Laws of England* that the term "vagrant" is an elastic term with no precise meaning. I found large numbers of persons of all kinds from prostitutes to I do not know what, all listed as different classes and kinds of vagrants. Therefore you have this somewhat unsatisfactory definition given in the Ordinance. Reference has been made to some parts of it by the hon. and learned Specially Elected Member. Mr.

Slade, particularly when he referred to clause (c) of the definition of "vagrant", "any person wandering abroad", as one of the kinds of vagrant. That, I think, could well include the hon. Attorney-General. If he took a walk more than 50 yards from his house he would be wandering abroad and could be taken to be a vagrant. I am not altogether sure whether the "or" which follows "wandering abroad" was not meant to be an "and", whether it is a printing mistake or something of that nature, but surely you could not have a vagrant defined as any person wandering abroad, unless there is some special definition attached to the phrase "wandering abroad". It seems to me that this definition will obviously require careful consideration and I hope that the Minister will, when he comes to the Committee stage of this Bill, introduce an amendment to deal with this particular difficulty in that definition "any person wandering abroad".

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): All will be made clear later.

MR. NAZARETH: I am glad to have the assurance of the hon. Attorney-General that all will be made clear and I shall wait for more clarification on this particular part of the definition.

I do believe, Mr. Speaker, that the primary object of this Bill is to take measures in good time to prevent crime and I am fully satisfied that the police are entitled to our aid to reduce crime and that this is a measure obviously intended and calculated to reduce crime. There may arise a question of hardship on the work seeker, but in that respect the Bill is an improvement on the present Ordinance; all that it provides is that if a person is arrested as a vagrant it requires him to be taken to a court and thereafter, if he is found to be a vagrant, he is ordered to return to his district where he has to remain for three years as opposed to life, which was the provision in the Ordinance as it stood. Besides, of course, he is not indefinitely detained there, he can obtain a permit from the district officer which will enable him to leave the district and seek work if there is opportunity to obtain work.

It has been suggested that this is a measure of discrimination against the Africans. I can see no sign of that. If

[Mr. Nazareth]

it operates against Africans, it operates only in this way, that they may be the persons in larger numbers than members of other communities who are without work, without reputable means of employment and tend to congregate in large numbers in the towns. But that does not necessarily mean that this is a measure of discrimination against Africans or against the members of any particular race. Its first and, I would suggest, its only object is to control the congregation of large numbers of persons without work who would be tempted to commit crime.

The administration of this measure will need to be carefully watched to ensure that there is no abuse of the powers that are given. In that respect I note with some concern that the Tribal Police are included in the definition of "police officers". I do not know whether it is strictly necessary to enlarge the definition and give these powers also to the Tribal Police. This is a measure which is primarily needed in the larger towns and I see no necessity for giving tribal police powers of arrest, particularly when we bear in mind the allegations made by the hon. Member for the Nairobi Area, when he referred to members of the Tribal Police who were unable to read cards which were handed to them and read them upside down. If persons of that calibre are entrusted with these powers, then there might be a danger of abuse and a danger of harassment of persons when such tribal officers, tribal police officers get power and are in a position to arrest them.

The hon. Member—the hon. and learned Specially Elected Member Mr. Slade also referred to section 12 of the Bill. There is a similar provision in the Ordinance and, perhaps, in the light of what he said the Minister will see sufficient grounds to remove this provision to its proper place and include it in the Juveniles Ordinance or somewhere else so that it does not figure in the Vagrancy Ordinance because children ought to be dealt with in a separate class.

I hope, therefore, that the Minister will take a very special care in watching the administration of this Ordinance. It is one which can lead to considerable abuse of power. It is one that can lead to considerable harassment and that is

why—that is one of the reasons why the hon. African Elected Members have so strongly opposed the Bill. I do not share their view and I do not agree that it is right to kill the Bill by asking that it be read this day six months, but on the other hand, seeing the danger of abuse the administration should be most carefully watched and supervised, especially the actions of officers of police in the lower grades.

Apart from these reservations which I have I would like to give full support to this Bill which I fully believe ought to be now proceeded with.

MR. SPEAKER (Sir Ferdinand Caven-dish-Bentinck): As this amendment is merely a parliamentary way of killing the Bill I shall now put the amendment.

Question proposed.

DIVISION

The question was put and Council divided.

Question that the word to be left out be left out ^{and} on a division negatived.

The question was negatived by 50 votes to 11.

AYES: Messrs. Ayodo, Khamisi, Kiamba, Kiano, Muchura, Muihi, Mboya, Ngala, Odonga, Tipis, Towett.

NOES: Dr. Adalja, Messrs. Alexander, Amalemba, Bechgaard, Blundell, Bompas, Group Capt. Briggs, Messrs. Cowie, Crosskill, Mrs. Gecaga, Cmdr. Goord, Messrs. Griffiths-Jones, Harris Harrison, Hassan, Havelock, Hope-Jones, Mrs. Hughes, Mr. Hunter, Dr. Ismail, Col. Jaekman, Messrs. Jamidar, Jones, Kebaso, Luseno, Mackenzie, Madan, Mangat, Mathieson, Lt.-Col. McKenzie, Mr. Mohindra, Sheikh Muhashamy, Messrs. Nathoo, Nazareth, Ngome, Nur-mohamed, Rogers, Sagoo, Salim, Mrs. Shaw, Messrs. Slade, Ernest Swann, Travadi, Usher, Sir Smith Vasey, Sir Alfred Vincent, Dr. Walker, Messrs. Webb, Zafrud-Deen.

MR. SPEAKER (Sir Ferdinand Caven-dish-Bentinck): The amendment is therefore lost and we return to the original Question.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, it has been refreshing in this late stage

[The Minister for Legal Affairs] of the debate to hear some common sense injected in regard to it by the other side. It has also been refreshing, despite their opposition to the Bill, to hear at any rate the last three African Elected Members who have spoken acknowledge that there is a vagrancy problem. Earlier, speakers among their colleagues seemed content to delude themselves that there is no vagrancy problem. Of course there is a vagrancy problem. Mr. Speaker, there is a vagrancy problem in virtually every country in the world, as my hon. friend the Member for Nyanza Central said.

This Bill, as has already been explained by my hon. and learned friend the Member for Western Electoral Area, is not a new measure, it is a repeal and re-enactment in improved form of an existing statute which has been on the Statute Book for nearly 40 years, and to attempt to suggest that this vital legislation is unnecessary because there is no vagrancy problem is merely an exercise in fatuous self-delusion.

Almost equally fatuous is the argument that this Bill is racial. Of course it is not racial. Mr. Speaker, nor more racial than the law of murder is racial because the majority of persons convicted of murder in this country are Africans. It is non-racial as it will apply to everybody of every race who is a vagrant and who will be equally subject to the terms of this Bill. Therefore, Sir, let us, I suggest, approach this Bill from a standpoint of responsibility, a standpoint of objectivity, in the interests of the society that has to be protected against the spivs and drones of this world. Let us make no mistake, whereas it is absolutely right that we should all, the Government and the other side of the House, apply our energies to the solution of the unemployment problem, let us make no mistake that even in a state of full employment, there will still be vagrants; there will still be the unemployed, there will still be the people who do not want to work, people who want to batten like parasites on society. There will still be that type of person even in a state of complete and full employment and legislation of this nature will be necessary to deal with it.

Now, Sir, a number of suggestions have been made in the course of this de-

bate for the amendment of the Bill with a view to its improvement. I propose, with your permission, to deal with them in turn.

The first amendment with which I wish to deal is the amendment suggested to the definition of "vagrant" in clause 2 of the Bill. In paragraph (a) of that definition, the hon. Specially Elected Member, Mr. Stade, suggested that there should be a qualification that the person referred to in that paragraph of the definition should have to be "found wandering abroad". He also suggested that the definition was apt to include as a vagrant a person who, without adequate means himself, was nevertheless supported on account of age or infirmity by relatives, friends or others. I do not necessarily agree with him that the definition in this paragraph is apt to include such persons, neither do I agree with him that it would be an improvement to include the qualification that a person, in order to fall within this paragraph, should be "found wandering abroad". That raises complexities of proof which are quite unnecessary and tends to obstruct the effective and efficient administration of the Ordinance by the courts. I do, however, concede that the word "reputable" in this sort of context is an imprecise term and not really an ideal term for inclusion in a legislative provision of this nature and, accordingly, notice has been given that at the Committee stage an amendment will be moved to substitute this paragraph with a paragraph reading "any person having neither lawful employment nor lawful means of subsistence such as to provide him regularly with the necessities for his maintenance". That, I think, also takes account of the hon. Specially Elected Member's point, and it is, I think, quite clear, beyond, as they say, a peradventure, under this rewording that a person being adequately maintained by a relative or friend does not fall within the mischief of the paragraph.

The hon. and learned Specially Elected Member and my hon. and learned friend the Member for the Western Area also raised the question of the construction of paragraph (c) of the definition. I was sufficiently presumptuous when the latter Member was speaking to tell him from my seat that all would be made clear and I propose now to tell him how, with the

[The Minister for Legal Affairs] ingenuity which my draftsmen are accustomed to exercise, this particular point will be clarified. It will, indeed, be clarified by the insertion of two commas, one, Mr. Speaker, after the word "place" in the second line and another after the word "alms" in the same line. I think my hon. and learned friend will agree that with the insertion of those two commas the sense of the paragraph, as always intended, will be quite clear.

Now an amendment will also be moved, Mr. Speaker, at the Committee stage to substitute a fresh subsection (1) of clause 4. This amendment will in fact be only formal, it will not affect the substance but it will put the subsection into proper form. The proviso in the subsection as it stands in the Bill as published is not really a proper proviso, it is a qualification and it should not be framed as a proviso, and we propose, therefore, to move an amendment replacing that subsection with a subsection in proper form but without in any way affecting or altering its substance.

Now, in subsection 4 of section 4, the hon. and gracious lady from Uasin Gishu suggested that ten days, the period expressed in the clause as it stands as the period for which the person may be, so to speak, remanded in custody for the purpose of carrying out adequate enquiries, that that period was too short for the purpose, and in deference to that suggestion an amendment will be moved at the Committee stage extending the period to 15 days, which is the normal period of remand under the Criminal Procedure Code.

Sir, a number of apprehensions have been expressed in the course of this debate regarding the administration of this Bill when it takes effect as law. I leave my hon. friend the Minister for Defence when he replies to the debate to give, as I know he will give, the assurances regarding the constant efforts which he and the Commissioner of Police and the Minister for African Affairs in relation to the Tribal Police, make to ensure that the police officers who are invested with powers under this Bill exercise them fairly and impartially.

But there have been other apprehensions expressed and in defence to those apprehensions the Government proposes

in the Committee stage to propose the insertion or addition to clause 4 of the Bill of a subsection (6) which will provide for appeals to the Supreme Court from orders made by magistrates' courts under clause 4 (1), that is to say orders either committing vagrants so found to places of detention or ordering them to be re-patriated.

Some criticisms have also been levelled at clause 8 of the Bill which relates to the obligation on persons, found to be vagrants, in places of detention to work. Now, Sir, it is not the practice or is it the intention that vagrants in places of detention should be put to work involuntarily otherwise than on necessary domestic chores to ensure the maintenance of proper hygiene and sanitation, that is to say to keep their own quarters and their possessions in a clean, sanitary and hygienic condition. Therefore, it is proposed that at the Committee stage the Government will move the deletion of clause 8 because for the latter limited purpose under the regulations or rules regulating the management of places of detention, which for the time being and until are all the country can afford the establishment of entirely separate places of detention, will be located in prisons, there will be adequate powers for example under prison legislation, to ensure that these necessary precautions in the interests of cleanliness and hygiene are fulfilled.

Those are the amendments which are proposed for the Bill, and I must, I think, before I sit down deal with one or two other points which have been raised in the course of the debate. In regard to clause 3, the hon. and gracious lady the Member for Uasin Gishu suggested that where a police officer arrests a person and is required, as he is under the clause as published, to take that person before a court "as soon as possible", that the period should be more precisely defined and limited to 48 hours. Now generally, such as the phrase "as soon as possible" or, as is used in the Criminal Procedure Code, "without unnecessary delay" are used in these contexts advisedly because if one lays down a period such as 24 hours or 48 hours or whatever it may be, the practice tends to develop that the person is held for that period before being taken before a magistrate. In other words, the period does not really become

[The Minister for Legal Affairs] a maximum period, it becomes a usual or minimum period, and provided that the courts do, as they should, and as I am sure they do in practice do, watch that evidence of arrest and the time of arrest is laid before them, and ensure that persons are not held in custody for excessive periods before being brought before the courts, then I submit that the formula used in the clause as it stands is preferable to a precise limitation to 48 hours.

Now my hon. friend, the Member for Nyanza North, in his criticisms of the Bill said that it was quite unrealistic in effect to draw any comparison with the United Kingdom Act of 1824. He did on Thursday refer to it as the Act of 1854. In fact its date was 1824. He said that that Act was passed in the special conditions of England at that time. Historically, there is quite an analogy to be drawn from the conditions in England at that time and the conditions in this country. At that time following land enclosure and the development of the industrial revolution there was a move towards the towns—a trend towards the towns out of the countryside—and that is, of course, what is happening here.

The hon. Member also said that we are now in the aftermath of the Emergency, and that we have spent a lot of money which could have been spent on development—he said “if Government had been sensible”. I would prefer, I think, in the interests of truth and accuracy to say that that money or much of it could have been spent on constructive development had there not been the violent rebellion by the Kikuyu and related tribes under the name of *Mau Mau*.

The hon. and learned Specially Elected Member, Mr. Slade, suggested that clause 12, which deals with juvenile vagrants under the age of 16, was really misdirected since in his submission it would be much better to treat juvenile vagrants as children in need of care. There is a great deal of force in that argument, Mr. Speaker, but, of course, clause 12, in the Bill, does not prevent juvenile vagrants from being dealt with as children in need of care under the Prevention of Cruelty to and Neglect of Children Ordinance 1955. There is, moreover, a new children's charter in course of preparation, which will replace that

1955 Ordinance, and also the Juveniles Ordinance of 1934, and in the course of the preparation of that new Children's Ordinance, consideration will be given to the whole subject of the treatment of juveniles, including juvenile vagrants, and when that new Ordinance is finally enacted clause 12 will no longer be necessary, and it will be repealed. For the time being, however, it does add to the alternative courses of action which can be taken to deal adequately with child vagrants, since the powers which it confers are not entirely co-extensive with the powers which exist under the Prevention of Cruelty to and Neglect of Children Ordinance. It is proposed therefore that we should retain clause 12.

Just one or two very small points to conclude, Mr. Speaker. My hon. friend the Member for Coast Rural, made the suggestion that Government should produce legislation to introduce secondary industries. Well, Sir, it is a common fallacy that Government can do everything and anything, but I do ask the House to remember that neither Government, nor this Council, nor anyone else can produce secondary industries by writing laws. We will produce and expand the industry of this country only if we create and preserve the necessary conditions of confidence and assurance for the future in which such industries can be fostered and flourish in this country, and it is, I think, a matter for intense regret that so much is being done and said by so many people in this country at the moment to impair that confidence and to impede the creation of those conditions which will attract new industries, and thereby help us to solve our unemployment problems.

Finally, the same hon. Member referred to the statement of the Chief Secretary in the House the other day and the statement as reported of the Secretary of State yesterday. I see, Mr. Speaker, no incompatibility or inconsistency between those two statements whatsoever. The fact of the matter is that the Secretary of State said yesterday, as the Governor said in his Speech to this Council at the opening of this present session, there are powers—there will be powers—under the new Preservation of Public Security Bill, when it is enacted as an Ordinance, whereby if it should prove necessary, and I underline that

[The Minister for Legal Affairs] back to the essentials, because in all too many cases I would submit, the speeches of many hon. Members opposite consisted of the maximum of rhetoric, containing the minimum of substance.

Now, Sir, the first point that I would raise, is that I would ask the hon. African Elected Members that they must really lose this persecution complex. This legislation is not directed especially against the Africans in this country. Unfortunately all countries have the problem of unemployment and vagrancy, and all countries find it necessary to pass legislation of this nature. It is not, Sir, common to Kenya only.

Now the two main lines of attack by the hon. gentlemen were, first of all that Government was perpetuating Emergency legislation, and the other and diametrically opposed attack, which was also raised, was that this was new and restrictive legislation. Sir, I do hope that it has been made clear by my hon. friend, the Chief Secretary, by my hon. and learned friend, the Attorney-General, and in the memorandum to the Bill, that this is not a new Bill. This Bill does not replace Emergency Regulations. It replaces the Vagrancy Bill of 1920. My hon. friends drew attention to this, but quite undeterred many hon. Members went on to make exactly the same point again and again.

Now the hon. Member for Nairobi Area—who I regret to see is not present—stated that the Bill had been introduced due to the pressure of the Nairobi City Council. With the greatest respect, Sir, I have never heard a more monstrous or totally unfounded statement in my life. This Bill will not apply only to Nairobi. It will apply to all the urban and rural areas in the Colony. Now Sir, many Members will be aware that this does not only affect the European Highlands, it also applies to African rural areas. Now, I am sorry to see that my hon. friend, the hon. Member for Southern Area is not here, because as he is well aware, this problem often recurs in the Kericho District, which is an African area. When food is short on the Kano Plains, there are large movements of the Luo into the Belgut division of Kericho, some of whom look for work and are employed, and others of whom, indulge in stock thefts, and exactly the same as in Nairobi City, the genuine Luo

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work seekers will be able to obtain employment with the Kipsigis, and the unemployable who is merely spying out the land for stock thefts, which as the hon. Member is aware is always rife in that area, will be able to be dealt with under the Vagrancy Ordinance, if he is unable to prove that he is a genuine work seeker.

Now, it was also alleged, Sir, by the hon. Member for Nairobi Area, that as a result of this dreadful measure Africans would be unable to settle in Nairobi and no African would be able to visit relatives. Now, Sir, when we think that this Bill replaces a Bill which has been in act since 1920, the hon. Member would, no doubt, be most surprised to learn that, despite this brutal and repressive measure, the African population of Nairobi has risen from 18,000 in 1920 to 140,000 in 1959, and I think, Sir, that point meets the hon. gentleman's argument.

Now, Sir, the question was also raised on a number of occasions, that the African areas or reserves were going to be used as dumping areas. Now, Sir, this point was dealt with by my hon. friend, the Chief Secretary, but, undeterred, many Members returned to the attack. Now, Sir, I am most sympathetic to the problems of the African rural areas because I have had a great deal of dealings with them myself, but, Sir, I would ask hon. Members quite dispassionately what is the alternative? Are we to leave people without food, without employment, without a home? To starve in the towns in the settled areas? Are we to leave them to turn into criminals because there is no other means of earning their livelihood? Or are we, as this Bill suggests, to return them to their families and relatives at the taxpayer's expense. Now, Sir, great play has been made of the fact that all vagrants will be repatriated to the African areas. They will, in fact, be repatriated to their homes. If they have lived for many years in Mombasa, they will continue to live in Mombasa. If they have lived for many years on a European farm, they will continue to live on the European farm. They will be returned to where their home is and where their relatives live. Now, Sir, I have discussed this question with a large number of Africans in the rural areas, and in parti-

cular in North Nyanza, and as hon. Members know, the unemployment problem in North Nyanza is probably as severe as in any other African area in this Colony. Now, Sir, the Africans with whom I discussed this matter in North Nyanza, admitted that it was, to some extent, a choice of evils, but, they said, it is better that the man should be returned to his family and tribe, because we can and will look after him, whereas if he is left in the town inevitably he will become a criminal and a completely derelictized man.

Now, Sir, the next point that I would deal with is this curious example we always get of split personality among the hon. African Elected Members. Now, Sir, on the one hand we always have these constant attacks of the African Members upon the police force, the tribal police force, and the hon. Member for Southern Area commented with some disavour on the African courts. Now, Sir, on the other hand, we are always being attacked in this House on why there is not more promotion given to African civil servants. I would suggest, Sir, that the hon. Members should clear their minds and take one line or the other so that in future debates, whatever merits their arguments may lack, they may at least have the merit of consistency.

The provisions in regard to children, Sir, have been raised by a number of Members, and as the hon. Attorney-General said, whenever possible they will be dealt with under the Cruelty and Neglect of Children's Ordinance, 1955, and also under the new Children's Act which is now being drafted, and we can assure hon. Members opposite that on all possible occasions we shall use these Acts to deal with juveniles and not the Vagrancy Bill. Unfortunately, Sir, clause 12 is necessary because, owing to the large number of young delinquents who are in the towns, I am afraid that their numbers and character would completely swamp the resources of the places of safety and, therefore, owing to the sheer magnitude of the problem, I am afraid that clause 12 is necessary. However, I would repeat my assurance that it will never be used unless it has to be.

I would also like to reassure Members that in, for example, the Nairobi area, the administration have a laid district

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officer who is almost entirely engaged in looking after these children, and arranging for their repatriation, and that when they return to their districts in the Central Province, they are, in fact, accepted at juvenile reception centres before they are returned to their homes.

Now, the next great point of attack, Sir, was that the coloured work cards are the reintroduction of the *kipande* in disguise. Now let me say here and now, Sir, this was entirely devised for the protection of the work seeker. If the work seeker (and nobody can force him) wishes to show his sturdy independence by refusing to carry a card, he is, of course, fully at liberty to do so. But if, as a result, Sir, he is arrested by the police because he cannot prove his place of employment, he will get little sympathy from me, nor will any hon. Member who raises the case in this House. He has the means for his protection. If he does not wish to avail himself of it, he need not do so.

Now, Sir, to answer fairly quickly some of the individual and minor points of detail which were raised by hon. Members. The hon. Member for the Southern Area said that he thought the ten days powers of remand was too much. It has already been pointed out by my hon. and learned friend the Attorney-General that we feel it is probably too little in order that the true facts about the vagrant can be found out, and it is, in fact, entirely for his protection. If there was not this period the unfortunate man might be repatriated when, in point of fact, one could find relatives or employment for him where he is.

The hon. Members also made a great play over the district officer's permits, which a man, who was being repatriated, can obtain in order to obtain work. Well, once again, Sir, there is no need for the repatriated vagrant to get this permit from his district officer. As I have said before, if he wishes to show his sturdy independence by not getting a permit, he can do so, but once again, Sir, he will have no cause for complaint if he is then arrested by the police, because he is unable to prove that he has, in fact, obtained authority to leave his reserve after being repatriated.

Again, Sir, the hon. Member and the hon. Specially Elected Member, Mr. Muchura, made great play and waxed hotly indignant about clause 8. In fact, Sir, they wasted their eloquence on the desert air. Had they listened to my opening remarks they would have heard that this clause was to be deleted as redundant in the Committee stage. Had the hon. Members listened to my opening remarks, they would have saved the House much time, the taxpayer much money, and themselves much breath.

Now, Sir, the hon. Specially Elected Member, Mr. Muchura, and also the Member for Coast Rural brought up the question of beggars. Now, of course, Sir, there are a number of beggars who do make a very handsome living indeed. But for those, Sir, who are in genuine need, there are a number of charitable organizations with whom we can put them in touch, and my hon. friend, who is not here at the moment, Sir, the Minister for Local Government, has a vote for the relief of distressed persons, and he can always, for people of that nature, see that, in fact, they do obtain relief.

Now, the hon. Specially Elected Member also raised the point of how is a repatriated vagrant in his reserve going to know, in fact, if there are jobs for him. Well, Sir, in most districts nowadays at district headquarters there is a labour exchange and by the simple process of walking into the district headquarters and looking at the board, which is put so kindly outside, he can find what employment is available, and it can be made available for him. In addition, Sir, as hon. Members know, particularly in Nyanza Province, throughout the African areas there are camps which are placed there by the tea industry and the sisal industry, and all that anybody has to do, who wishes for employment is to walk into that camp, sit down, whereupon he is fed, transported and brought to his place of work. In those conditions, Sir, he would most easily and of necessity obtain a permit from his district officer, and I do not think the difficulties of obtaining employment will be quite as difficult, as has been made out.

Now the hon. Member, Sir, also raised the question of what is the position of European vagrants under the provisions

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of clause 11 (2) (b). Now, Sir, it should be explained that such vagrants will be sent back to Europe if they do not hold, or are not entitled to be granted, a resident's certificate under the Immigration Ordinance. If they are permanent residents, Sir, they will continue to live here, and I hope the hon. Member will be able to assure his elderly friend in Eastleigh.

He also, Sir, raised the question of Youth Clubs. Naturally, Sir, we fully welcome Youth Clubs, but I would submit, with all respect to the hon. Member, that there is very little use in a juvenile attending a Youth Club by day if he has no place to sleep in, no food to eat and no relatives to live with. And also, Sir, if he is repatriated to his reserve I would like to say that most of them have Youth Clubs also.

Now the hon. Member for Nairobi Area, Sir, apart from making allegations about the City Council, as the master minds behind Government policy, also raised the question of the families of vagrants. What, Sir, he said, will happen to the vagrants' families. Well, Sir, in most cases, they do not have families. They drift into the town to become "card sharps and pimps" and procurers on their own, without bringing their good people with them. But if a vagrant has a family, Sir, I can assure the hon. Member that they will also be repatriated to their home at the taxpayers' expense.

The hon. and gracious lady the Member for Uasin Gishu—I think we have fully dealt with her point over juveniles—but there were one or two other points which the hon. and gracious lady raised. The first was the question of local authorities recovering costs from parents, Sir. This is a most admirable solution, and I am delighted to hear that there is at least one Member in this House who does not take the view that the State should provide everything, and I will certainly go into this question with my colleagues and see if this would be possible. We do, in fact co-operate with both welfare organizations and local authorities, but quite naturally you do not cater for it in the legislation.

The hon. and gracious lady also suggested that vagrancy cases before the

courts should be transferred for hearing from the court at the place where the vagrant was arrested to the court at his home. Now that does have its attractions, but it would be impracticable because all the witnesses and the evidence of the vagrancy would be in the former place.

The hon. and gracious lady also raised the point of clause 11 (5). Why was provision made for custody in prison of vagrants awaiting removal overseas? The answer is that the necessary facilities exist only in prisons but such vagrants are kept separate from other prisoners are, of course, not treated as convicts.

The hon. Member for Nyeri and Embu in a most patently sincere speech, with which I sympathize very greatly, is obviously worried that the Bill is directed against the Kikuyu, Embu and Meru. I can assure the hon. Member, Sir, that that is not the intention. It is not specially directed against them, and he can reassure his constituents, but I am sure the hon. Member will agree that large numbers of people of any race or any tribe wandering about, if they do not have means of subsistence or a home, can only turn into criminals.

The hon. Specially Elected Member, Mr. Slade—most of his points have already been dealt with by my hon. and learned friend, the Attorney-General. He did raise one question which I do not think has been dealt with—or rather two. He expressed the fear that old people who, for example, were maintained by their relatives, would, in fact, become vagrants under the law. I can assure the hon. Member that will not be the case, but such old persons would, because of maintenance received from their relatives, have sufficient reputable means of livelihood.

He raised the question of fingerprinting of juveniles for identification. That, Sir, will now be possible. I would willingly give the assurance which has been called for by hon. Members opposite that we shall do everything in our power to ensure that this Bill is administered in a reasonable manner, and I can assure the hon. Member that I have already taken the matter up with the Commissioner of Police, and also with my hon. friend the Minister for African Affairs.

[The Minister for Internal Security and Defence]

I would again, in conclusion, submit, Sir, that it is to nobody's advantage to have large numbers of unemployed persons roaming at large, preying upon the law-abiding and respectable citizens of this Colony, and I would also suggest, Sir, that in most cases prevention is better than a cure, which is to repatriate a man instead of waiting until he has become a criminal and then putting him in prison.

Mr. Speaker, Sir, I beg to move.

The question was put and carried.

The Bill was accordingly read a Second Time and committed to a Committee of the whole Council tomorrow.

The Stamp Duty (Amendment) Bill
Order for Second Reading read.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir, I beg to move that the Stamp Duty (Amendment) Bill be now read a Second Time.

The object of this Bill, Sir, is to give a certain amount of relief to the taxpayer. I hope that in those circumstances it will be welcomed and accepted by the House.

Clauses 3, 4 and 8 are of a minor nature which either rectify the original drafting errors or are consequential on other amendments, but the amendment provided for in the other clauses are of some consequence.

Clause 2, Sir, replaces in its entirety the old section 5 of the original Ordinance and it makes it clear that it is not the intention that documents which are temporarily brought into the Colony should be liable to Kenya stamp duty, solely by virtue of the fact that they were executed in the Colony. The original section 5 resembles in some ways the law in the United Kingdom and in India, but there was one essential difference and that is that under section 6 (5) of the main Ordinance in Kenya there was a criminal offence created whereas in England failure to have the documents stamped for United Kingdom stamp duty merely meant that the instrument could not be produced in evidence until it had been so stamped. The clause now before the House, Sir, imposes a liability to pay stamp duty on instru-

ments specified in the schedule where-soever executed which relate to property situate or to any matter or thing done or to be done in the Colony, so, as is explained in the Statement of Objects and Reasons, they will not have any effect in respect of property situated outside the Colony merely because they happen to have been executed here.

Now, Sir, clause 5—clauses 3 and 4 are relatively minor amendments—is consequential on clause 2.

I then turn, Sir, to clauses 6 and 7, and there, Sir, at the Committee stage I shall be moving amendments to those particular clauses as they stand. I shall be bringing forward a further series of amendments. Those clauses, Sir, deal respectively with the situation which arises with the reconstruction or amalgamation of companies and secondly with associated and subsidiary companies.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) left the Chair]

[Mr. Deputy Speaker (Mr. Bechgard) took the Chair]

The present Ordinance, Sir, provides that where relief is obtained under sections 95 or 96 of the Ordinance, every such instrument must be adjudicated and a fee of Sh. 100 paid for each adjudication. The Government considers that where there are a considerable number of instruments which are themselves subject to the same set of circumstances, and are between the same parties, the collective fee in respect of each adjudication is inequitable, particularly as in fact the work of adjudication has only to be done once. The redraft of clauses 6 and 7 in the form in which I shall move an amendment at the Committee stage will do precisely this and will ensure the companies obtaining a relief under sections 95, and 96 of the principal Ordinance are not subsequently penalized so as to negative the relief originally granted.

There are only two other points of substances. The first is clause 9, which contains important amendments to section 117 to the principal Ordinance. Subsection 1 (d) at present exempts transfers of shares in Government and High Commission stocks or funds, and it is now proposed to widen this to

[The Minister for Finance and Development] include stocks or funds of the Governments of Tanganyika and Uganda. Reciprocal legislation, which will be applicable to Kenya Government stocks, is, I understand, to be introduced in the other two territories and it is proposed that this particular clause 9 shall only become operative by notice in the Gazette so that we can bring it into force when the reciprocal legislation in Tanganyika and Uganda is also brought into force.

Finally, Sir, there is clause 10, and this is intended to remove doubt, to remove an element of doubt in item 21 of the Schedule. The original item, I might add, Sir, might be construed as meaning that where the rent reserved by lease exceeds Sh. 2,000 per annum no duty is payable on the first Sh. 2,000. The amendment to item 21 (2) and item 21 (3) now brings these two items into line with the wording of item 21 (1) and removes any possible doubt as to the amount of duty for which such instruments are liable. This particular clause, since it is clarificatory, will be retrospective to the date of the original Ordinance, that is, 1st October, 1958.

There is one further point, Sir, that I should mention, and that is that there will be a third amendment which I shall have to move at the Committee stage, and that arises out of timing. It will be necessary at that stage to move an amendment to the Short Title and to clause 1 in order to substitute for 1959, 1960.

Sir, I beg to move.

MR. WEBB seconded.

Question proposed.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

MOTION

EMERGENCY LOAN ASSISTANCE FUND: TRANSFER OF

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Deputy Speaker, Sir, I beg to move—

THAT the balance at credit in the Emergency Loan Assistance Fund and

all assets of the said Fund, including debts due to the Fund in respect of outstanding loans, shall be transferred to, and shall vest in, the Land and Agricultural Bank of Kenya.

Sir, on 7th October, 1959, when moving the Second Reading of the Land and Agricultural Bank (Amendment) Bill my predecessor said, and I quote him, "Hon. Members may remember that in the Budget Speech of 1956 I told the Council that a sum of £250,000 will be placed at the disposal of a special Committee which will be set up to receive applications for assistance from the European and African farmers who found themselves in economic difficulties as a direct result of the Emergency. From this Fund, which was then designated the Emergency Loan Assistance Fund, interest-free loans have been made both to African and European farmers. A moratorium on capital repayment was granted for the first five years in each case after which the loan is to be repaid over the period of 15 years. Now, Sir, on examination we came to the conclusion that the best body to handle this Fund over the 20 years of its lifetime would be the Land and Agricultural Bank, and so it will be a process of handing over to the Land and Agricultural Bank not only the management and administration of the Fund but the repayment of the capital. In this way the capital of the Bank will over the period from 1957 to 1977 be increased by some £250,000, some being the qualifying adjective because of course there may be some people who are not able to repay it at that time. There will be a need therefore to enable the Bank to take over this particular sum and receive this money which will be on a different basis to any other money the Bank has been granted. There will be a need some time in the future to table a Resolution in this Legislative Council that the funds of the Land and Agricultural Bank be increased from time to time by transfer to it of the residual cash, loans and the loan repayments which at present constitute that Fund known as the Emergency Loan Assistance Fund. I do not imagine that there will be any opposition in this Council to the Bank being called upon to undertake that particular duty." That is the end of the quotation from what my hon. predecessor said about this proposal, and now I am

[The Minister for Finance and Development] in the Motion before the House asking the House to agree that this particular transfer shall take place.

Sir, I beg to move.

MR. BUTLER seconded.

Question proposed.

The question was put and carried.

MOTION

CONTROL OF OPTICIANS AND AUXILIARIES

Continuation of debate commenced on 18th December, 1959.

MR. HUGHES: Mr. Deputy Speaker, in supporting the Motion put forward I would very much like to add to the list: hearing aids. The reason for this, Sir, is that there is an increasing incidence in deafness in the country and an awareness of the need to assist these unfortunate people in purchasing hearing aids. Now, Sir, it is very necessary when purchasing hearing aids to obtain one that is suitable for the type of deafness, and in this connexion the Society for Deaf and Dumb Children in Kenya of which I am President, wrote to the National Institute for the Deaf in England who realized this necessity, and in their reply they confirm how very difficult it is to purchase the type of aid best suited for any particular type of deafness. In a letter from them they do say this, "We find that many people find it necessary to try several aids before they find one that suits them the best. That is why we feel it is so necessary that there should be some arrangement whereby they can have the instrument on trial before buying." They go on to say, in connexion with an agreement that they had with manufacturers and dealers of hearing aids as to the methods of trading, "All people included in our list are members of the Society of Hearing Aid Audiologists which ensures that they have the necessary knowledge to understand the problems of the different types of deafness." Now, Sir, up to the present time we have been very fortunate in as much that the dealers in this country who are representatives of the various firms, manufacturing firms, in England have had a great deal of knowledge of deafness and in testing these patients and giving them the

best type of hearing aid available. They have also been kind enough to allow them to take them for a trial period to see if they suit them or not. Sir, the time has come when it is very necessary to import hearing aids that are cheaper. The hearing aid imported from Britain costs something in the region of £30 and over. Now, we have through our Society imported a number of Japanese hearing aids into this country. These hearing aids work out at approximately £6 each so they are within the means of the majority of people out here. They are very excellent hearing aids and in our Society we do have our specialists who test children particularly before we sell them the hearing aid. I would suggest to Government that when hearing aids come within this price category they might possibly be imported by a number of firms out here and sold over the counter as so many other goods are sold, and I do suggest, Sir, that there is a very great danger if this goes on. I would like to suggest that if Government does agree to the setting up of an enquiry to go into trading in this manner they do put on their list the question of dealers in hearing aids.

Mr. Deputy Speaker, I beg to support.

DR. WALKER: Mr. Deputy Speaker, first I would like to thank the hon. Mover of this Motion for his appreciative words of praise for the medical profession in general in Kenya and in Nairobi in particular. We in the Ministry will do all in our power to encourage and support the medical profession in Kenya so that it can maintain a high standard of competence and efficiency so that we may soon have Kenya known as the medical centre of this part of Africa as indeed it is rapidly becoming.

There are very few avenues in medicine that are not available to the public in Kenya and if we continue with our efforts to improve the profession I would agree that at the same time something must be done to maintain the standard of medical auxiliaries. The Government does accept this Motion in broad principle, but I would like to point out that this Motion could have come a little earlier as we have progressed quite a lot in our consideration of the means in which such an enactment could be made. We have been considering for some little while the advisability of registering and

[Dr. Walker] controlling such medical auxiliaries as the radiographers, the physiotherapists, the dispensers, as opposed to the pharmacists, the laboratory technologists and opticians. I am prepared at the same time to consider including in the proposed legislation the control and registration of audiometricians in accordance with the wishes expressed by the speaker who has just sat down.

The House will remember, Sir, that there are two Ordinances in operation at the moment. The control of pharmacists is under the Pharmacy and Poisons Ordinance, and nurses and midwives are also registered and controlled under the Nurses and Midwives Ordinance. This new enactment which we are considering will take under its wing, if I may say so, those categories of medical auxiliaries I have already mentioned, but in accordance with local conditions of Kenya we shall also have to register and control such grades of staff as the assistant radiographers and the assistant physiotherapists. The dispenser could be classed as an assistant pharmacist, but will come under the provisions of the proposed legislation.

Now, Sir, there is one great advantage, to my mind, of having such legislation in this country, in that we can control the standard of conduct of the medical auxiliaries and we can set a standard of training. Having set a standard of training, the next step would be to give a legal status to local examinations and local courses of training. I think that will be a tremendous advantage as it may, in the future, no longer be necessary to send candidates and trainees abroad for their tuition. Opportunities for post-school education are developing so rapidly in Kenya that there is no reason, so far as I can see, why medical auxiliaries should not be trained in Kenya and attain a standard of examination which is locally recognized.

With regard to the means by which we will control medical auxiliaries, I would like to say that I have been studying the Bill recently introduced in Parliament in Great Britain, entitled the "Professions Supplementary to Medicine Bill" which seeks to set up a separate Council—separate from the General

Medical Council; but it would appear to be a very much more simple method to achieve our ends to adopt the Act as it exists in Southern Rhodesia which is a "portmanteau enactment" for the Registration and Control of Medical Practitioners, Nurses, Pharmacists, and the rest. It seems to me that it would be better if we extended the provisions of the Medical Practitioners and Dentists Ordinance to take medical auxiliaries within the ambit of that enactment.

As I have said, Sir, the Government accepts the Motion in principle. There are certain details with regard to the wording of the Motion as it stands that we cannot accept. As I have pointed out, we have already done a considerable amount of work in considering this matter and, to my mind, it appears that to appoint a committee would not hurry things on. The Mover seemed to think a committee would act as a prod to the Ministry—but I do not think the Ministry needs any prod at all; we are going very fast along the way already and I can assure the hon. Mover and this House that before any Bill is brought for discussion here we will have consulted fully with all interested bodies so that they can express their views outside the House and we may have a Bill that may go through here with the least amount of opposition.

Another part of the Motion that cannot be accepted is that an enactment should be made with regard to the control and registration of opticians similar to the Opticians Act of 1958 in Great Britain. I have studied the Act, Sir, and it is, to my mind, far too advanced for our local conditions in Kenya. Indeed, I feel the Act is a little bit too far advanced for conditions in Britain. I am one of those persons who thought it was a very good thing indeed that you could, before the War, go up to a counter in Woolworths and try on spectacles until you found those glasses which suited you, and for payment, I think, of sixpence a lense and one shilling for the frame you were satisfied. Similar conditions should exist in Kenya. There are many parts of the rural areas where, with the advance of education, persons require glasses, but it is not possible for them to visit a large town and consult a dispensing optician. I feel that in the Bill that will be brought

[Dr. Walker] before the House we must make allowance for that. There should be a category of assistant opticians who could be trained here locally, and, as the hon. Mover has said, the East African Optical Association is already in process of training such a category of staff; hence we want a simplified Ordinance that will work for our local conditions. That being the case, Sir, as I have said, it would not be wise, I think, for this House to bind the Ministry to producing a Bill which would make such an enactment similar to that in the United Kingdom.

If the hon. Mover will accept it, I should therefore like to propose an amendment to the Motion as it now stands, and I should like now to read out the terms of the amendment: That the words in the first and second lines of the Motion "to set up a Committee or Committees to examine" be deleted and that the words "similar to that now existing in Great Britain" be deleted, the amended Motion to read: "That this Council urges Government (a) to examine the desirability of introducing legislation for the registration and control of opticians and (b) the necessity or otherwise to register and control medical auxiliaries such as physiotherapists and radiographers."

Sir, I beg to move.

MR. SMITH: May I second this amendment, Sir?

I do feel that my hon. friend who has moved it has taken a very broad view and a very clear view of the original Motion, and I strongly approve this amendment and beg to second.

Question proposed.

THE SPEAKER (Sir Ferdinand Caven-dish-Bentick): (Inaudible).
If no other Member wishes to speak, I shall call upon the Mover to reply. Thereafter, I shall, as usual, put the amended question first.

MR. BOMPAS: I am sorry that Government saw fit to move what I thought was a totally unnecessary amendment. I was very careful in my Motion not to define the committee in any way as to its extent or numbers. This really left it completely

open for Government, if it so desired, to appoint its committees departmentally and in effect that it was now being offered to us in the amended Motion.

I also made it clear in my speech that I did not necessarily look for legislation anywhere near as complex or so detailed as the British Act, and I think that Government has placed an unduly strong interpretation upon the words "similar to that now existing in Great Britain" and somewhat unnecessarily has sought to expunge them.

Sir, I was a little disturbed at the hon. Director of Medical Services's reference to buying spectacles over the counter until one was satisfied. To remove that situation was one of the prime objectives in the introduction of the Act in Great Britain.

I would like to thank hon. Members who have supported the original Motion, in particular the hon. Nominated Member Sir Ernest Vasey for his full support against a background of experience as a Minister for Health, and the hon. Nominated Member, Dr. Adaja, who supported it with only the reservation that unqualified persons who practised auxiliary medicine as a part-time profession should not be qualified for local registration. With that view, Sir, I am in complete agreement and I thought I had made that point in my opening speech, but possibly I was insufficiently explicit.

This being the season of good will, and in the belief that if half a loaf is better than no bread and a monacle better than no spectacles, I accept the amendment and I do so in the light of the hon. Director of Medical Services's assurance to this House that investigations have already proceeded some distance and that they will be pursued diligently and intelligently, I hope, and with proper consultation with people who are interested or who are informed and who can give valuable assistance to Government.

Sir, I beg to support.

MR. SPEAKER (Sir Ferdinand Caven-dish-Bentick): Both the amendment and the original Motion are the property of the House and there can be no acceptance or withdrawal without the

[Mr. Towett] once an illegitimate child is employed, the putative father should be relieved of his responsibility for maintaining that child.

Sir, another really big problem could be raised when you have an illegitimate child of say, 15 years who has an illegitimate baby of maybe nine months—what is going to happen in such a case? It is very difficult.

I now come to the duration of orders. To say that the provision may be required to continue until the child has attained the age of 13 does not help much because the court is given discretion to say that such payments may or may not be required. Why give the court discretion? We should simply say that the provision should continue until such and such a time, without giving the court discretion.

Now, Sir, coming to section 11—Custodians, I do not like this section, Sir, because the problem of custodians does not arise in Kenya because Africans still look upon the children of their relatives as their own. If the mother of an illegitimate child dies or becomes of unsound mind or goes to prison, in these circumstances, Sir, the only thing to do is to look for her relatives, especially her parents wherever they may be, and they will look after the child concerned. We do not have any problem in looking for custodians, Sir. If my wife and I were to die and we left a child, then my brother will take the child and will look after him. What you must realize is that the child belongs to the clan—or to the tribe—and not to the Government. It is for the reasons that I have given, Sir, that you do not need a custodian, any relative of the mother will look after the child. Among some of the African tribes, children are considered to be the property of that tribe—and I do not mean property in the material sense of the word—but in the sense that they bring wealth to the clan. When they go out to work and earn money, that money is brought back to the clan, and we do not want that tradition to be broken, Sir. We want these children to come back to us bringing with them their money which will then become the property of the whole clan.

This Ordinance, Sir, does not, I am sorry to say, help to improve the welfare of the society in Kenya. It does not help the children whom we are trying to help. It is not specifically stated throughout the Ordinance that the illegitimate child belongs to his father, and there is no statement anywhere that the child belongs to his mother. We therefore are in difficulty when Mr. Y is told that he is the putative father of the child and is responsible for looking after the child, then we also tell the mother that the child is hers and we are therefore left in doubt as to whom the child belongs. It must be specifically stated to whom the child belongs—whether to the mother or to the putative father. That must be made clear and that will save some of the confusion that has been caused at the moment.

Sir, another reason why this Ordinance does not help to improve the welfare of the Kenya society is because it is materialistic in its outlook. Once the question of finance is brought in and it is stated that the mother of the illegitimate child must get money, then emphasis is being placed on the financial side which is very materialistic. We do not want to be materialists. We want to continue our present moral code by which we look after these people because it is natural to us and not because we are forced to have these financial arrangements.

Unless we explain in very clear, lucid language, Sir, what the relationship is going to be between the putative father and the mother and the illegitimate child, the feeding and the education of the child concerned will not be proper, Sir. Supposing the mother were to receive Sh. 40 per month, Sir, how are you going to make sure that that money is going to be used for the actual feeding, education and in the sole interests of that child? Are you going to have an *askari* following these mothers around. If the Government really want to help these children, then they should collect the money from the putative fathers, and arrange for the feeding, education and bringing up of the child. But as things stand now, the mothers can spend the money on themselves in any way they wish such as by having a drink or going to a dance and then who is going to look after the child? Unless the Government makes the relationship between the putative father, the

[Mr. Towett] mother and the child very clear, Sir, then the putative father is not going to be concerned or go to any trouble. Under tribal law he can say that the mother is not good enough for the child, and something will be done about it. But under this Ordinance, the man will only have to make sure that he obeys the order and gives his Sh. 30 or 40 and his responsibility will end there, then if the mother wants to spend the money in any way she pleases, the child will suffer.

Sir, I think this whole Ordinance is a misarrangement of things, and I feel that the Government should repeal it.

Sir, referring to the Kalenjin people—who will get the bride-price when the illegitimate girl is married? Who will get the cows? Who will get the money? Who? The man who maintained her when she was young? The mother of the girl? Or will the bride-price of this girl not be given to anybody? I want the Government to explain this point very clearly to me.

Now, Sir, coming to the interesting side of things, I come to Christianity. In church we are told that sinners are forgiven. We know that if we repent sincerely, then we will get salvation. However, in accordance with this Affiliation Ordinance, Sir, if you sin, you are not forgiven—anyway for the next 16 years! Is that not very serious, Sir? It is terrible!

Sir, if I, as a Christian, am identified in court as the putative father of a child and fined say, Sh. 40,—when I go to church the next day, will I be forgiven? If I have to continue paying Sh. 40 per month, then I have not been forgiven and I will not dare go to church because I will still have the stigma on me for the next 16 years. Even after the 16 years have finished, I do not think that the church will forgive me because it will have been published that Towett has an illegitimate child and that will be the end of it. There is no forgiveness in this Ordinance. Once a person has been identified in court as the putative father of an illegitimate child, then I am sure the church will not forgive you, you cannot even forgive yourself. How can you? You know that you have got a child of 15 or 16 years and then you are an old man, and that child is not with

you but is with somebody else—how can you dare to go to church.

Sir, I think the Kalenjin people were wiser than the present British Government because we used to kill all illegitimate children! I am serious, Sir. We used to kill them. We wanted the girls to be married, and we did not want these girls to go to their husbands' homes with children produced outside that home. We used to kill them, and then Christianity came in and made us more Christian and then we stopped killing them. Now my people are willing to marry girls with illegitimate children, and they do not worry about this—they have accepted that. But if you are now going to identify the fathers, then nobody among our tribe will marry a girl who has an illegitimate child who is being maintained by another man. Nobody, Sir.

Now, Sir, I married my wife in church in the Christian way, and if I am now taken to court on this wonderful charge, then she will automatically start divorce proceedings. If the court identifies me as the putative father of an illegitimate child and my wife hears this, she will have no alternative other than to say she wants to be divorced because it will be down in writing that the magistrate of the court has decided that I am the father and I will not be able to say no. This Ordinance will therefore produce more and more independent women from some of us. So long as you have the British way of divorce proceedings coming in because when you marry in church you are only supposed to have one wife or one husband all the time—then it is terrible, Sir, to start making identifications and pinning someone down to an illegitimate child.

I hope that the more Christian people among us will fight to have this Affiliation Ordinance immediately repealed. It is terrible. It is terrible if you are a Christian and you know that if you tell the priest your sin and you repent, then you know that the when your wife knows that it has been proved beyond reasonable doubt that you are the father of a child outside her home—then she must go and seek a divorce. She cannot avoid it. How can you tell her—No, it is all lies? It has been laid down in court and you cannot avoid it. It is inevitable. So we must have this Ordinance repealed, Sir.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Mr. Towett, you are only allowed half an hour, and that half an hour is now up.

MR. TOWETT: Yes, Sir, it is coming up. Oh, all-right, I will sit down now, and then I will continue when I am called upon to reply because I still have several points to make, so I will continue this and reply later. Thank you, Sir.

MR. MULIRO: Mr. Speaker, Sir, I second this Motion because it completely cuts across the customs of the African. I think it was most unfortunate that a document of this kind was ever passed by this Council. Africans in various areas have got various customs, and according to various tribes. My colleague, the hon. Member for the Southern Area, has tried to show some of the customs of the Kalenjin group, and I think that by the time this Motion is through, the Council will know quite a lot about the various customs of the Africans. For instance, we, the Buluhya, pay a *ngombe* when someone finds himself in this form of trouble. Having paid a *ngombe*, then the child becomes his. Failing this, he then agrees to marry the girl, then the question of paying the one *ngombe* does not arise. One pays the dowry, then the woman and the child both become his. I think that this Ordinance will encourage the African girls to refuse marriage in some cases. As long as they know that they can collect say, Sh. 200 from a man because he is the father of her child, then she might get another child by somebody else and you may have cases—I do not think there will be many, but it might happen—where you have one woman having perhaps three illegitimate children, and the income of that woman would then definitely be very high. I think an Ordinance of this nature encourages these women to behave in this manner.

MR. SPEAKER: I have more to say, but since the time is on the dot, I will sit down and continue.

MR. SPEAKER (Sir Ferdinand Cavendish-Bentinck): I will now, as announced, take the two questions which were addressed to the Chief Secretary.

QUESTION NO. 30

MR. MUIMI asked the Chief Secretary to state why no Kitui Akamba has, up to this date, been appointed either to the post of A.D.O. or A.D.A., since the establishment of these posts for Africans in Kenya and what qualifications, if any, are required for the relevant appointments to these posts?

THE CHIEF SECRETARY (Mr. Couits): Mr. Speaker, Sir, I beg to reply and in doing so I would like to apologize to the two persons who have got questions on the Order Paper that I was not in the House at Question Time today.

The post of Assistant District Officer was absorbed into the District Assistant cadre with effect from 1st July, 1956, and no longer exists as a separate post.

The qualifications required for appointment into this cadre are that a candidate should be between 20 and 30 years of age, but may be accepted up to 35 if he has had experience and possesses special qualifications which make him particularly suitable. He should possess the Cambridge School Certificate or its equivalent.

District Assistants are not appointed on a tribal basis but are appointed by the Civil Service Commission on merit. Whilst a number of Machakos Akamba have been appointed to this cadre, it is confirmed that no Kitui Akamba have been appointed. There is no reason why one should not be appointed if he applies for a vacancy in response to an advertisement and is selected as suitable for appointment in competition with other applicants.

MR. MUIMI: Mr. Speaker, Sir, arising out of the Chief Secretary's reply, is the Chief Secretary aware that of the applicants to the post of Assistant District Officer, two were grades, one was— (inaudible.)

THE CHIEF SECRETARY (Mr. Couits): I am not certain whether the hon. Member is referring to Africans, but if he is so referring there were two Makerere graduates, one was an M.A. graduate of an Indian university, one possesses an intermediate B.A., four possess diplomas in public administration, education, agriculture and teaching.

[The Chief Secretary] nine with Cambridge School Certificates or equivalent and seven of Form Four Standard.

MR. MUIMI: Arising out of the hon. Minister's reply, is he implying that no candidate has been found suitable in this appointment?

THE CHIEF SECRETARY (Mr. Couits): I am not implying, Sir, I am merely stating that no one of suitable qualifications has so far applied.

QUESTION NO. 50

AIR COMMODORE HOWARD-WILLIAMS asked the Chief Secretary to state in that several Kenya boys are emigrating rather than accept inferior terms to boys from Britain, will the Minister investigate the case of Kenya-born sons who have the same diplomas as several boys from Britain who have been employed at higher rates of pay?

THE CHIEF SECRETARY (Mr. Couits): replied: I am unaware of any cases of the kind to which the hon. Member for Nairobi North refers, but if he will let me have the details of such as are known to him I will have the facts examined.

MR. ALEXANDER: Mr. Speaker, Sir, would the Minister answer the last part of the question?

THE CHIEF SECRETARY (Mr. Couits): Mr. Speaker, I think I have answered the whole question, I am unaware of this particular state of affairs.

ADJOURNMENT MOTION

NAIROBI DISTURBANCES

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Under Standing Order No. 12 the adjournment of Council has been moved by Mr. Blundell.

MR. BLUNDELL: Mr. Speaker, I wish to place before the House certain anxieties which are in the public mind over the recent disturbances in the River Road and Duke Street areas of Nairobi.

There are two aspects of the matter, one is restricted to the responsibilities of hon. Members opposite and the second is restricted to the responsibilities of hon. Members on this side of the House. I want to make it clear to the House that in raising this matter as a matter of public importance, I do not do so with

the idea of establishing a witch hunt but of trying to set in motion some arrangements which may well help us to avoid a recurrence of such a disturbance in the future.

I think the Minister concerned for Defence would be well advised in the course of the debate to make a statement and allay public anxiety over certain aspects of the matter. It is inevitable in circumstances of this nature, that rumour develops and criticisms are spread which may or may not have foundation. What is essential, I think, is that the Minister should be able to satisfy the representatives of the public on this side of the House in so far as they may wish to put to him one or two aspects of the matter which have caused anxiety in the minds of the public.

Now, Sir, I would like to ask the Minister whether there is any, in his opinion, truth in the assertion that there was an undue delay by the police in getting to the scene of the trouble. If there was, then I think the Minister would be well advised to tell us why and how he proposes to avoid it in the future. And if there was not and if the Minister is truly certain that there was not, I believe in the interests of the police force themselves this is an excellent opportunity for him to show that there was no delay.

The second point to which I would like to draw his attention is this; having satisfied the House whether there was delay or not, I would ask the hon. Minister to satisfy us that the police forces that were alerted and moved to the scene after the initial outbreak and when it had spread, were indeed sufficient to deal with the trouble. Experience in other territories, both near at hand and elsewhere have shown us that there is always the danger of a racial conflagration when traffic accidents take place in a situation in a city where people are, for one reason or other, in the streets in great numbers. That has taken place not only in Kampala but further afield to the south of us. It would be interesting to know whether this aspect of the matter has at any time been considered by the security arrangements in Nairobi.

Lastly, in regard to this, I would like to put to the House and to the hon. Minister that over the last six or

[Mr. Blandell] seven months I have been consistently approached by members of the public and especially by the Asian community, that they fear that the general attitude of the police force towards their particular security does not have as high a priority as that of other communities.

Now, in raising this point and being so frank about it I would assure the hon. Minister that if there is no truth in it, it is to the advantage of all of us that he should be able to say so clearly and concisely. Those, I think, are the main aspects in regard to the police action, which is largely the responsibility of the hon. Member opposite. In raising them, Sir, I would like to emphasize this, as a result of experience during the Emergency, I think I can claim to have been a consistent supporter of our police force. They have been under a considerable strain for a long time and the last thing that I would wish to do is to undermine in any way the confidence of that force. I raise these matters to give the Minister responsible the opportunity of denying, agreeing or giving to us his views of the general matters. And lastly, I am certain, Sir, from what I know of our police force that no good force—and we have one—will resent the right of public representatives to make public comment in regard to matters of this nature which affect the public security and safety. It is on that basis that I want to put to the House these anxieties which have been raised and ask the hon. Minister to enlighten us as to those aspects of it.

Now, Sir, I turn to the responsibilities of the hon. Members on this side of the House. I think it would be quite unrealistic of us not to understand that in circumstances of this nature we, on our side, can make a tremendous contribution to the security situation. We can do it in a number of ways and it is quite wrong to imagine that only the police force are a measure for the preservation of public security. A tremendous force in avoiding disturbances of this nature in the future is—let us be frank about it—the attitude of the public mind. Now, Sir, some of us have for a considerable period of time emphasized to this country and to the people of this country, the dangers of racialism in itself. Here we had last weekend in this city instances

of that danger and what is far more alarming, the rapidity with which that danger can spread. I wanted, therefore, during the course of this debate, to put firmly and squarely before the hon. Members of this House and especially Members on this side of the House, that it is the duty of every one of us to try and avoid this development of a malignant stage of racialism which, I regret to say, tends to lie inherently in all of us.

There are a number of reasons why we should do it in our own self-interest. The first is that it destroys the confidence of each community in this country amongst ourselves so that advance progressively here becomes more difficult. Secondly it destroys confidence overseas in the development and the capacity of our country to move forward in co-operation, which will justify the investment of further capital here to the benefit of everybody. If hon. Members would remember that every time we expound the spirit of racialism, we may well be raising something which will destroy the confidence upon which our country can develop, I am certain that would apply, each one of us, a self-denying Ordinance.

I want to be quite frank about this, anybody who has been in the politics of this country for some time knows all the artifices and the devices which are unnecessary to raise the particular racial angle of the audience which one is addressing. The particular plea I wanted to make today apart from the plea I have made to the hon. Minister for Defence to satisfy and allay public anxiety in the matter, is that every one of us should resolutely set about to do our utmost to prevent the building up of this racial feeling. It is perfectly possible at any public meeting to put the problems of the people, the anxieties that they may feel, the development which they want, the actions by Government which they desire in such a way that it is not tainted in any way by racialism. The particular plea, as I have said, that I wanted to make to hon. Members on this side of the House—in conjunction with myself I hasten to add—is that we should do our utmost, both on platforms and ordinarily, to reduce the racial aspects of our life and to try to create as far as we can an

[Mr. Blundell] atmosphere which enables us to work together. I believe, Sir, this is a contribution which each Member can make individually and secondly there is a further contribution which we can make, which we have begun to develop recently, which is speaking together on public platforms to members of all races and thus beginning to get some different aspects of race more firmly in their place.

If, Sir, out of this disturbance we can get an assurance from the Minister which will satisfy us, on the alertness of the forces under his responsibility, as it were, for the furtherance of the public safety, then I think we shall have secured something from this. Further, if hon. Members agree with me as I think they will, that we too have a part to play in attempting to reduce the racial pressures and the dangers that arise from them, then again it will be more than worthwhile raising the matter.

MR. MANGAT: Mr. Speaker, Sir, I think it one of the most serious matters which has ever been brought to this House. I am sure every Member will realize that its gravity is apparent from the very fact that it is being put here by the leader of the largest parliamentary group in this House, and also appreciate that today, though the Asian community is the victim, that other communities may perhaps be the next. Let me make one point clear, Mr. Speaker, and that is this, that these were not clashes, this was not a riot, it was a wanton attack by irresponsible Africans on peaceful Asians. This attack took place over a mere incident, an accident between a motor-car and a pedestrian, it was just indicative of that bad feeling which has pervaded through this town for several months past, that is that many people of this town are taking the law into their own hands. Today the indications are that if an Asian or a European have an accident and the other party happens to be African, he dare not stay on the spot, even for his car to be examined or the investigation of the accident to be carried out by the police and has to go to the police station to escape manhandling by people who have nothing to do with the accident.

Now, Mr. Speaker, sometime ago the hon. the Chief Secretary quoted in this

House something which had appeared in the *Daily Express* of 27th October this year. And one of his quotations was this which was alleged to have been said by one of the hon. Members of this House—“The present Government of Kenya is stupid, scared and has lost all self confidence. It is now rapidly losing control of the situation there.”

When this quotation was used by the Chief Secretary many of us smiled or simply thought it was a matter worth laughing at. But from what I saw on Sunday—I was an eye witness to many incidents on Sunday—I am becoming more convinced every day that the epithets used about the Government in this quotation are correct. It is stupid because although the Asian Elected Members had approached the Minister for Internal Security to take precautions to prevent such incidents, no precautions were taken. It is a sad reflection on the Special Branch that they could not even visualize the possibility of such action being staged when the Secretary of State for the Colonies was in town.

Secondly, Sir, it is stupid, because even though these disturbances took place 48 hours ago, up to this moment we have not had any statement from them, either giving the causes or the action taken by the Government. It has exhibited similar inefficiency many times before, where matters of state were concerned. In this matter the Government should have been the first to issue a statement.

In the third place, it is stupid, because it allowed the Secretary of State himself to make a statement without knowing the facts of the situation. This is what the Secretary of State said, “All forms of violence are deplorable, but it is clear that the disturbances were unpremeditated and unplanned. I have been kept in very close touch with the situation by the Government.” Now that simply means, by the police. There was no justification for the police to allow the Secretary of State to say it, that it was a clear case of unpremeditated events. One should examine the evidence, the surrounding circumstances leading to it. Although the place of incident was the junction of Duke Street and River Road, hon. Members know the geography of the town:

[Mr. Mangat]

What reason was there for it spreading to Eastleigh and Victoria Street and even to Jevanjee Gardens? I witnessed incidents where poor Asians, unoffending people who even did not know what was happening, accompanied by women and children were being chased by Africans and kicked on their backs, and even a European who was slightly sun-tanned was mistaken for an Asian, and he was attacked, but when he took off his coat, six Africans ran away like the cowards as they were and it was that European who after accompanying the police, 25 minutes had elapsed after the people of River Road had telephoned for the police and when they telephoned to me no police had arrived, although they had telephoned over 25 minutes previously.

Now, Sir, the other epithet was that the Government is scared. Now that is the only interpretation that the Asians can put on the attitude of the Government, because the police in River Road, are so scared that shop keepers are being abused on their very premises and they are being manhandled, and the *askaris* stand there quite indifferent to what is happening. And they are scared because the police do not come to the place for 25 minutes though during all hours they are seen in the area with their radio cars, and they are scared because they dare not even say who were the aggressors, and who were the victims. Certain hon. Members of this House, the Asian Minister for Works, and another hon. Member have made statements, as if the Asians as well as the Africans were responsible for this. It was not so. Perhaps they do not know the circumstances, and all the more the necessity for making an enquiry before as high an authority as the Secretary of State for the Colonies, who said it is a clear case of unpremeditated attack, is allowed to make a statement. I could tell the hon. Members that even now at this moment if in River Road an Asian motor-driver grazes the back of a bicycle of an African he is in for it. Is that the state of peace and order the Government is going to maintain? What else can the Asian community say if not that the Government is not scared? And have they lost confidence? Of course they have. Why else does it not come out with a statement telling the public what happened on Sunday? It has no confidence

in itself, and it is now rapidly losing control of the situation as well. The Government knows best whether that is true or not.

Again, Sir, the Chief Secretary made another quotation on that day, words spoken by the hon. Member for Nairobi Area: "I intend to tell the Governor that if we are not granted a new Government next year, then it is going to be very, very difficult to quieten the Africans." Now this may be a statement which may not sound alarming to men of intelligence, the Members of this House, but give it to the ordinary man in the street and he will take it as a hint—I am not going to be quietened any more unless I have a Government of my own choosing. Coming on the eve of this London conference, the Asian community are entitled to interpret it as a specially arranged show for the Secretary of State for the Colonies, that he should know that if he does not succumb to the demands of the Africans they will not be kept quiet.

And, Sir, again, there was a quotation which says, "We are quite prepared to take positive action if we do not get what we want soon." These words "positive action" were last used by the late Mr. Jinnah when he put up his demands in India and the result was the carnage of Calcutta. Everybody knew what positive action was, and here this perhaps is the first instance of positive action. It is nothing else. Now the Asian community is perturbed. Not only the Asians, but all peace-loving citizens would be perturbed at this show of irresponsibility. In Nairobi, Sir, there are 120,000 Africans. There are about 85,000 to 90,000 non-Africans, and the 120,000 Africans are supposed to be the best cross-section of the African population of the country. They are the people who are seeking to be given the government of the country. If a very large portion of them—thousands of them—behave in an irresponsible manner, how can this House ever imagine that either the London conference or the Secretary of State can go ahead and shower responsibility on the irresponsible.

Sir, if there is a straight fight between a man and a man, one probably would not mind the injuries. It is even then regrettable. But here it is an indignity which is being inflicted on a whole com-

[Mr. Mangat]

Men being chased through the streets and men not returning any blow being hit on the back. It is the dignity of a man which is being destroyed in this very town; and the Government cannot simply say, "We are sure it was not premeditated." That is not sufficient. If the Government cannot do anything better and if the Asian Ministers cannot make the Government behave better, I think they should resign from the Government; and the Asian Members should refuse to go to the London conference unless we are assured that the man in the street is safe from violence. And that, as the Mover of this Motion said, is the responsibility of the unofficials as well. The hon. Member for Nairobi Area in a statement has said that the P.C.C. is not in favour of violence. I would have thought, Sir, he would have had a much bigger influence than that. It is not the P.C.C. only it is the African in Kenya who should not be using violence, and I expect that the hon. African Members will come out openly to tell their people that this is not the sort of behaviour which they should exhibit.

I beg to second.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Mr. Speaker, Sir, I think it is probably better if I speak at this stage of the debate in order that the facts, as known to me, are placed on record.

Now, Sir, the first thing that I want to make abundantly clear. We have been into this matter very closely, and there is not the slightest scrap of evidence that what happened on Sunday afternoon was premeditated. It was, Sir, what I can only describe as spontaneous racial combustion.

Now, Sir, it is all very easy to be wise after the event, but the first thing I would like to point out to hon. Members of this House is that if you think of the size of Nairobi—if you think of the number of cars—you cannot foresee where a traffic accident is going to take place. It might have taken place at Dagoretti Corner. It might have taken place at Parklands. In point of fact, it took place at the worst place and the worst time it could, which was in the middle of Sunday afternoon, at the meeting of River Road and Duke Street.

Now, Sir, the hon. Specially Elected Member, Mr. Mangat, has taken the Government to task for not issuing a statement. Yesterday afternoon, Sir, I met with a number of the Asian Elected Members from the Nairobi Area, and they asked me not to make a statement even as to the details of our interview, because they felt it would exacerbate present racial feeling, and that the best thing that could be done would be to let the thing die away. That, Sir, answers the hon. Specially Elected Member's comments.

Now, Sir, I propose to be factual, and the House can judge from the facts, which I will give them whether the police were negligent or not. The first point I would make, Sir, was that this was a normal Sunday-afternoon. There was no cause for the police thinking that a riot of this nature would suddenly develop. There have been attacks on Asian citizens. There have been attacks on Asian shops, and we have done everything in our power to deal with that aspect. This is an entirely new aspect, and I will take full responsibility to this House for not being a crystal gazer and realizing what was going to happen.

Now, Sir, on Sunday afternoon the situation was as follows. Standby personnel were at all stations with their vehicles. In the Northern, Central and Western Divisions patrol cars were cruising continually. There were also the normal traffic patrols and motor-cycles cruising, and the normal men on the beat. There was a standby party of 60 men at the Mathari lines. There was a standby party of 30 men at Nairobi West, and there were the 3rd and 6th G.S.U. platoons at Embakasi. Now, Sir, I will be factual about what occurred.

At 3.10 an Asian knocked down a drunken African. He was not seriously injured. This was reported to 999, and an Asian traffic inspector, in a traffic car, heard control and went straight to the scene. At 3.11 an ambulance was sent for. At 3.17, Inspector Sahni reported that there was an angry crowd at the scene of the accident, who were refusing to allow the injured man to be moved. At 3.18 three 999 cars heard this and proceeded direct to the scene of the incident. And now we come to a very interesting point. The Western Division 999 car on route

[The Minister for Internal Security and Defence]

to the scene found another African lying near Racecourse Road—400 yards from the scene of the first accident—and this man had been hit by a hit-and-run driver, who was alleged, by onlookers, to be an Asian. I say "alleged". At 3.20 a European inspector and rank and file arrived to swell the forces in a Land-Rover, and at 3.27 the European inspector, the Crime Standby Officer, from Western Division, also arrived at the scene. Now, while this was going on, Sir, at 3.25 the controller at 999 called all the European inspectors in two messes and about 12 turned up to arrive at the scene within seven to ten minutes. Now, Sir, this may be where some misapprehension took place. So hurriedly did they come that they came in plain clothes and in their own cars, and it may well be that the public did not appreciate that, in point of fact, they were police inspectors. At 3.20 the Orderly Officer, A.S.P. Fallon, left immediately for the scene and the Mathari Standby party were also ordered to go to the scene. The G.S.U. Headquarters was asked to stand by and move one platoon to the scene. At 3.40 an additional 30 rank and file under a European inspector arrived at the scene, and at 3.45 the Orderly Officer arrived there. At four o'clock Chief Inspector Angell and an additional 30 rank and file arrived at the scene. At 4.10, Sir, Mr. Fallon ordered the police to quietly move the crowds away from the scene, back to the locations, and this is the point. At that time the situation was reasonably quiet again. The G.S.U. platoon was ordered to continue to stand by and not move for the present. Now, at 4.40 the Assistant Commissioner in Charge of Nairobi Area, Mr. Acker, arrived at the scene and found a large, but fairly orderly crowd. At 4.45 he ordered two platoons of the G.S.U. to move into Nairobi. The A.C.P. toured the affected areas, asking the crowd to go home quietly and addressing—and I think this is again important—Asians on balconies and roof-tops who were throwing stones and bricks at the crowd of Africans in the street below. At 4.45 there were 20 European police officers and 70 rank and file on the scene. Between five and six o'clock the forces were reinforced by four platoons of the General Service Unit, one riot squad—

30 men—and mobile parties were out in the affected areas from Parklands, Kingsway, Makongeni, Mathurwa and Pumwani and the Industrial Area police stations. There were also a large number of traffic policemen on motor-cycles. At 5.45, after a comparative lull, fighting broke out between Asians and Africans in a number of areas and it spread towards the Asian areas, the locations and the Industrial Area. At 6.15 No. 5 platoon of the G.S.U. arrived from Kiambu, and there were now on the ground six Gazetted officers, 30 inspectors and 300 rank and file. They then continued, Sir, to disperse the crowd, make arrests and move on the very large crowds which were present. Traffic was diverted away from the affected areas. Injured men were taken to hospital, and there were slides put on the cinema screens telling people to go home quietly at the conclusion of the performance.

Now, Sir, I do submit, that out of what was apparently a clear sky the police did everything which they humanly could. All human beings are fallible, Sir, and I would ask the House to remember that it was a weekend. Trouble of this nature could not be foreseen, nor the place where it occurred, and even police are normal human beings, although some Members might dispute, and must occasionally have rest. The police force have been under continual strain. They have had the railway strike and other incidents, and the answer is that human beings cannot go on working 24 hours a day indefinitely.

Now, Sir, if there are individual complaints about the behaviour of the police we would be delighted to receive them. In point of fact, already today the Commissioner of Police himself has started taking statements from people who have complained about police action, and they will be thoroughly investigated.

I would say, Sir, on behalf of the Government, we deplore the whole performance, and as I have said, it is easy to be wise after the event, and we are now alerted to a similar situation arising, but I would ask hon. Members to appreciate you cannot foresee at what time and at what place an incident is going to happen. All that you can do is to get on to the scene as quickly as possible.

I can assure the hon. Specially Elected Member, Mr. Blundell, that all crime,

[The Minister for Internal Security and Defence]

irrespective of race, is dealt with by the police. To them it is a crime, irrespective as to who it is committed by or who it is committed against. I have had a series of meetings with the Asian Elected Members, in which we have made suggestions as to how the situation can be improved and how we can all help. I would suggest, Sir, with the greatest of respect to the House, that I think the best thing we can do at the moment is to keep our heads, keep our tempers and leave it to the forces of law and order to protect law-abiding citizens.

MR. MBOYA: Mr. Speaker, Sir, after listening to the Minister's speech, I must say that I find myself completely in agreement with the Government, and the police could not have acted better and more efficiently. I regret that in a matter such as this, which all of us must regard as most unfortunate, any of us should seek to introduce statements or debate that can only be termed an attempt to get some political capital. It is not my intention to join in this attempt in the least. I have said this morning on behalf of the African community in Nairobi how much we regret that this sort of incident took place at all. I have appealed to the African community for restraint. I have also emphatically stated that we are totally against any acts of violence. But, Sir, the African is not the only devil. The Asian is not all the time the only angel. In matters of relationship there are two sides in the whole affair, and it would be a very big mistake for anyone to come here and seek to paint the African as the devil and the Asian as the angel. And the Minister has rightly pointed out—I myself came out and witnessed some part of this whole incident—and I did see stone-throwing and so—stones thrown both by Africans and also by Asians. I also did see what I considered to be unruly Asian groups as well as some unruly African groups. Now it would be a serious mistake, Mr. Speaker, for a Member on this side or that side of the House, wherever he might be, to try and drive some other issues into this situation, and as the Minister has rightly said, most of us believe that the least said about this incident the better it is for everyone. The most we can do is to appeal to the

people, not only the African people but to everybody for restraint and understanding. The question of relations between Asians and Africans is not the only one that we are dealing with. We are dealing with the relations of everybody in this country.

Now, Sir, listening to the speech of the Specially Elected Member, Mr. Mangat, one would have thought that we had completely prearranged this whole incident, timed it, and even arranged with the drivers who came and knocked the pedestrians. But that is not so. The incident was an accident. As an accident we consider it unfortunate. It is unfortunate that the people at the site and the people concerned did not appreciate and fully understand that we have motor accidents from time to time and that when they occur there are people who should normally deal with that sort of situation. Their task if a driver was running away would have been to try and hold him there until the police arrived, and let the police deal with him. Our responsibility in this respect is to advise all the communities—not only the Africans—on how best to handle such a situation in order to be of some help to the forces of law and order.

Mr. Speaker, this is not the only incident that has taken place in the last few weeks. I recall that there was a fight, for example, in the African stadium in which two teams were involved. There was a fight and someone was killed. Now, Sir, that is just another incident in which tempers rose—there was no racialism involved—the people who fought were Africans—the person who was killed was an African. Now these things happen, and the only thing I can say to my hon. friend, the Specially Elected Member, is to try and understand these things rather than come here and seek to make this a sort of a parting issue, or a political issue for some other motive unrelated to the event.

Let me conclude, Mr. Speaker, by saying this. The African community, or my knowledge has not, in Nairobi, or any other part of the country, the intention of harbouring racial antagonism against the Asian community or against the European community, and I would like to appeal especially to those who

[Mr. Mboya] would like to go out and start making this a big issue and start building it up into a racial issue and a point of conflict between the Asian and the African, that they will be doing a lot of harm, and if they are Asians they will be doing much more harm to the Asian community and to the country generally. The thing that we would like to see from the Asian leaders is an appeal to their own people also that they too must try to understand the other side, and that if there are any frictions—if there are any questions that might cause friction between the various communities—that we should sit down and talk about them. I regret, Mr. Speaker, that this matter, however important it is, should have been brought before this House today. I regret that it should have been brought here. In fact I said in the corridor after this Motion was moved that it was most unfortunate. The thought of raising this matter here instead of taking the simpler approach of talking it over, both with the African leaders and the Government and seeing just what we, as leaders, could do, if there was any question of friction in the race relations, in order to bring about a more peaceful and harmonious relationship, I do not see that much is being served by this debate apart from, of course, being very useful to the Press in the Gallery, and tomorrow for the readers. I do not see that this House is the place we wish to address, because if there is any conflict between our communities it is outside this House. It is the people outside this House that we wish to appeal to rather than come here and start scoring debating points. I regret that this was moved here at all.

MR. SLADE: Mr. Speaker, Sir, this is indeed a matter of grave national importance that we have to ventilate today.

Sir, we have had an event which has shown lawlessness in Nairobi on a very wide scale. On such a wide scale that many peaceful citizens are now walking in fear of their lives. We have also seen in the same event a very serious aspect which is an aspect—clear but I am afraid—of racial hatred. Now the hon. Member who has just spoken, and also the Minister, I think—but certainly the hon. Member—has suggested that when this sort of thing happens the less said

about it the better. Now, Sir, I cannot agree with that. I feel sure that it was the duty of us on this side of the Council to bring this matter for discussion in the Council today. When you have an incident on this scale, it is so sinister as regards public security and so disturbing as regards the political development of this country, that the public are entitled to have their anxiety soothed by statements both from Government and hon. Members on this side of the Council, and that is what we seek by this debate today.

Now, Sir, despite the fact that it has appeared to some of us that this riot had many indications of premeditation, the Minister has assured us it was not so. He has described it as a case of spontaneous combustion. Sir, I will accept that; but even so there is a clear responsibility on two sides, and the hon. Specially Elected Member, Mr. Blundell, has pointed that out, first of all with Government. It may be that Government was not able to foresee that such an incident could happen: they were not able to crystal gaze; but they have seen it now, and they must make sure that it does not happen again. Now, the Minister has assured us that he is deep in consultation to see how it does not happen again. That is the assurance we wanted in this Council today, for the assurance of the public. We know now that it can happen, and we must take every possible precaution to see that it cannot happen again.

Then, Sir, there is the other aspect of our responsibility. If this was spontaneous racial combustion then you do not have a combustion without a large amount of poisonous gas about, and that arises from poison in men's minds. That, Sir, is an even more serious situation, and that is something that Government cannot by themselves remove; it is something for us to remove, and we have got to set about removing it very quickly. This is the most serious evidence we have had yet of what mischief there is afoot by way of poisoning men's minds. It is very reassuring to hear from the hon. Member for the Nairobi Area how seriously he and his colleagues take this, and how much they want to join us in improving the situation. That is the second benefit which has come from this debate today. But I do think we have got to go a little further still, Sir.

[Mr. Slade]

On this side of the Council, particularly the Constituency Elected Members, claim to be the leaders of the people we represent, and we must take it upon ourselves not only to advise those we represent but, actually to control them. If we cannot control those we represent then we can hardly claim to be leaders, and I do hope that my hon. colleagues on my left here do agree that there is that responsibility. If they do so then indeed we have had good value from this debate in two ways, from the assurance of Government and from the assurance of hon. Members on this side of the Council.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Speaker, after listening to the first three speakers in this debate I had decided not to speak at all until the hon. Member for Nairobi Area spoke. I must confess, Sir, that while I appreciated his denunciation of violence not only on behalf of his community but on the part of everyone, I was surprised to hear him say that we must advise not only the African community but also the Asians that they have to exercise restraint. I thought, Sir, that he must have been talking with his tongue in his cheek. Here you have the Asian community the victims of assault. Here you have the Asian community, one of whom has died. Here you have the Asian community where women and children were assaulted, innocent children who could hardly walk about. Yet he stands up and says that we must advise the Asian community that they must behave themselves. I have a lot of respect, Sir, for the hon. Member for Nairobi Area but I was surprised and I felt ashamed that he could have spoken like that in this Council. That is not the right attitude to adopt. I think that the right attitude is this: that the maintenance of law and order in this country is the responsibility of the leaders of all the communities. It will not serve any purpose for him to say that Asians are also devils and that the others are not or vice versa—I am not interested in that—but more particularly than the leaders of any other community lies the responsibility upon the leaders of the African community not only to tell their people that they must not indulge in violence but to satisfy us, the people of the other communities, that they mean

business and that they will sincerely advise their people that there will be no violence. That is what we are interested in, so that they may inspire confidence in us. I want to tell my African friends that they must not regard the abhorrence of the Asian community to violence as a weakness. We must not allow the people of Kenya to embark upon a rough road such as the one they took last Sunday, because it is a road on which many people in the process will be hurt and damaged.

But I know one thing, Sir. And this is not a threat. I think I state a fact that the Indian Community deplors violence, but at the same time I hope the people of Kenya, including the Indians, will never be put in a position where they might start retaliating. That is not what we want to see happen in this country, Sir. All I am interested in, and all we are all interested in is seeing and hearing from my hon. African friends is this: that we regret the incident. My hon. friend the Member for the Nairobi Area has spoken and has said that; we appreciate that fact. I would like them to go further and say that they are going to go out into the field actively and persuade and convince their people that what happened on last Sunday was wrong. I am not trying to distribute blame, the major share of it, to the Africans. I am saying this in my sincere plea that it is their duty to do—not only to us but to the country as a whole. As the hon. Member said, if you want to inspire confidence not only in Kenya but for people outside Kenya then that is the kind of thing you have to do.

I can say, Mr. Speaker, that the Asian community will not fall in its standards. We have as one of our attributes the realization that we must set an example to others in good manners, in good conduct and in peaceful behaviour, and I would suggest to my hon. friend the Specially Elected Member Mr. Mangat that in spite of his strong attack upon the Government and the two Asian Ministers, let him not lower his standards and lose self-control. The most important thing in this matter is to keep our heads, as the Minister for Defence has said, and not lose self-control.

MR. NAZARETH: Mr. Speaker, Sir, we were much exercised in our minds as to whether we ought to have this Motion

[Mr. Nazareth] debated, but on balance I think that it does a service to have this matter debated.

The Asian Elected Members had a meeting with the Minister for Defence when we went into this matter, and it is true that we agreed that it would be undesirable to issue a statement lest we build up the racial atmosphere, but a debate on this matter, I think, Sir, serves a very useful purpose because it labels both points of view to be expressed and enables the Government to make a statement as to the facts of the matter.

It is said that this development was entirely unpremeditated. That may well be the case. We have no proof at the moment that it was premeditated, but it certainly follows upon a building up of the racial atmosphere which has been occurring for the last few months.

We had a very promising development in the formation of the Constituency Elected Members Organization that developed into a Kenya National Party. Unfortunately since then after a month or two of promising developments the racial atmosphere started and continued to be built up. There was an attitude taken on the part of the hon. African Elected Members that the time was not ripe for the formation of national parties. They thereupon took up other attitudes that they did not want Asian Members to serve as officers in the Kenya National Party. The next step was that they did not want to have Asian members in the Kenya National Party. Now, you started—

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): I think you are wandering away from the subject matter of the Motion.

MR. NAZARETH: We started with a non-racial atmosphere and we have been steadily sliding down. I feel that this is not of course the first occasion that an incident of this nature has happened—not of course on such a large scale—after an attack upon a man has occurred. It is not the first time, but that it should develop on such a large scale is an indication of the deterioration of racial relations and the building up of this unfortunate racial atmosphere.

It is said by the hon. Member for the Nairobi Area that Asian leaders should appeal to the Asians to understand the other side. Now, we have been making a very earnest endeavour to understand the other side and we have in fact steadily been acceding to their point of view. But unfortunately the more we understand them the less they seem to understand us, and the result is that we have had deterioration of racial relations. It is now time that this unfortunate happening that has occurred should lead the African Elected Members to consider very very carefully whether they are on the right path. If they do not reconsider their stand, their position, they will find that they set community against community. If you build up a racial atmosphere—

MR. MULIRO: On a point of order, Mr. Speaker, is the hon. Member in order in attacking the African Members as such?

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): I have already ruled that I think the hon. Member is going far beyond the subject of this debate and wandering into the realms of political expediency and political groupings. We are discussing a specific and particular incident.

MR. NAZARETH: On the matter of this incident, Mr. Speaker, I would say this, that this affords a great opportunity to the African Elected Members to do something to remove this racial violence which is creeping into racial relations. If we do not take this opportunity to impress upon the whole community that a racial atmosphere of this kind is bound to do great harm we shall not get the benefit, the only benefit, that can be derived from this incident.

It has been suggested to us that we should make an appeal to the Asian community. What kind of appeal are we to make to the Asian community? What has the Asian community done? Possibly a few of them might have thrown stones, probably following upon the throwing of stones by large numbers of the African community. I do not know what kind of an appeal we are to make to the Asian community. I would ask the African Elected Members that they should derive the advantage, whatever advantage we can derive from

[Mr. Nazareth], this unfortunate incident, to impress upon their people that incidents of this nature ought not to be magnified. They should endeavour to address meetings, and we are quite prepared to join with them in such meetings, to impress upon all people that the kind of thing which is developing is bound to have the most serious consequences. I cannot for one moment accept that the Asians were in any way to blame. They were the victims of this unfortunate incident—they were not the aggressors—and how it can be suggested, as it has been suggested by the hon. Member for Nairobi Area, that the Asians are not the only angels and that the Africans are not the only devils in relation to this incident, I cannot understand how such a remark can be justified. What the Asians have done against the Africans I do not understand. What the Africans have done against the Asians is unfortunately only too clear. I do ask the African Members to consider this incident in its wider aspect and to derive such advantage as they can from it and to reduce these incidents so that they never again occur.

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): I am now closing the adjournment discussion and Motion. Mr. Coultis, I understand that you wish to make an announcement.

STATEMENT

BUSINESS OF THE COUNCIL.

THE CHIEF SECRETARY (Mr. Coultis): Mr. Speaker, Sir, I would like all hon. Members to meet at 9.30 a.m. tomorrow for about two hours. I would say, to take the Committee stages of two Bills, and that is all the business I propose for tomorrow; after which I hope we might adjourn for, may I say, Sir, a happy Christmas.

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): This is the first time we have had a debate on a matter of urgent public importance under Standing Order 12. I would explain to hon. Members that normally I would only have allowed about 40 minutes for such a Motion for the adjournment, but as several hon. Members spoke at considerable length I did allow it to go on for nearly an hour. The object of these debates is not to

enter into very lengthy crossfire controversies but really to obtain an explanation from Government of an incident or of a matter, in regard to which Government holds administrative responsibility.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): I now adjourn Council until 9.30 a.m. tomorrow, 23rd December.

The House rose at thirty minutes past six o'clock.

Wednesday, 23rd December, 1959

The House met at thirty minutes past Nine o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

PERSONAL STATEMENT

MR. MUIRO: Mr. Speaker, Sir, I wish to make the following statement as a result of yesterday's debate on adjournment. In view of the fact that certain of the speeches made yesterday were not conducive to harmonious relations in this country, and were likely to arouse unjustified uneasiness in that an innuendo was made suggesting that African Elected Members and/or their political organizations were deliberately fostering anti-Asian feelings, I wish, on behalf of the African Elected Members, both in their capacity as individuals and as African leaders to state that we condemn any form of organized violence no matter from whom or where it may come as it is not going to lead this country to the prosperity we all look forward to.

COMMITTEE OF THE WHOLE COUNCIL

Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

[Mr. Bechgaard in the Chair]

The Vagrancy Bill

Clause 2

MR. WEBB: Mr. Chairman, I beg to move that subsection (1) of clause 2 be amended by substituting for paragraph (a) in the definition of "vagrant" a new paragraph as follows:—

"(a) any person having neither lawful employment nor lawful means of subsistence such as to provide him regularly with the necessities for his maintenance;"

Mr. Chairman, my hon. and learned friend, the Minister for Legal Affairs, in speaking on the Second Reading of this Bill yesterday explained the purpose of this amendment, which is primarily to

get rid of the word "reputable" which has perhaps a rather difficult connotation.

Question proposed.

Question that the paragraph proposed to be deleted be deleted put and carried.

Question that the paragraph proposed to be inserted be inserted put and carried.

THE DEPUTY CHAIRMAN (Mr. Bechgaard): There is a further amendment.

MRS. HUGHES: Mr. Chairman, should I take these amendments together or separately?

THE DEPUTY CHAIRMAN (Mr. Bechgaard): I think if we take them one by one.

MRS. HUGHES: Mr. Chairman, I beg to move that clause 2 be amended (a) in paragraph (c) in subsection (1) by adding after the words "so to do" in the third line the words "whether or not there is any pretence of seeing, playing, performing, offering anything for sale or otherwise inducing the giving of alms".

Sir, it is the experience of people who deal particularly with these children who are seeking and begging for alms that there are other methods than those described in this clause of doing so, and I know it is only a technical point, but are those other points covered?

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, with great respect to the hon. and gracious lady, I do not think that this amendment is either necessary, or indeed practicable. The criterion which this paragraph of the definition applies is the begging or gathering of alms, and the court will have to decide, whatever activity is being pursued by the beggar or the child, whether that activity is, in substance, the begging or gathering of alms. If there is merely a colourable device with a rather moth-eaten box of matches in a tray and a placard "Blind, with 50 children", that would not be a genuine attempt at marketing the matches. It would, in fact, be begging or gathering of alms, so if I could suggest it to the hon. lady, I think the point she has in mind is adequately dealt with in the paragraph as it stands.

MR. NAZARETH: Mr. Chairman, I would just like to speak not exactly on the subject matter of the amendment that

[Mr. Nazareth]

has been proposed, and I would refer to the speech made by the hon. Minister for Legal Affairs yesterday in regard to this very same clause, when he said that a comma be inserted, but I see no amendment-being moved to insert a comma. I think after the words "in any public place". I do not know whether the Minister thinks that the purpose would be served and the definition is equally clear without the addition of a comma, but I think it is necessary to have that comma for without it the clause has certainly given rise to confusion and misunderstanding in the Bill as printed.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, Sir, having made the point I had in mind to invite you, Sir, to make the necessary formal amendment in the course of your powers under Standing Orders.

THE DEPUTY CHAIRMAN (Mr. Bechgaard): I have the power to punctuate. I will do that. Is this amendment withdrawn then, Mrs. Hughes, or do you wish me to put it?

MRS. HUGHES: No, I withdraw it. Amendment, by leave, withdrawn.

THE DEPUTY CHAIRMAN (Mr. Bechgaard): Then there is a second amendment, I think, Mrs. Hughes, to subsection 2.

MRS. HUGHES: Mr. Chairman, I beg to move in subsection 2 by inserting the words "of about" after the word "in" on the fifth line thereof.

THE DEPUTY CHAIRMAN (Mr. Bechgaard): The word "in" appears twice in line five. Do you mean the first or the second?

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): It must be the second, Mr. Chairman, because I do not think the hon. lady would suggest the phrase "in or about the open air".

MRS. HUGHES: The point is, is it covered if children are sleeping under vehicles? Would that be covered by the clause as it stands at the moment?

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Government will accept this amendment, on the understanding that it seeks to introduce "in or about any cart or vehicle" and not in or about the open air".

THE DEPUTY CHAIRMAN (Mr. Bechgaard): I will put the amendment then.

Question proposed.

Question that the words proposed to be inserted be inserted put and carried.

Clause 2 as amended agreed to.

Clause 3 agreed to.

Clause 4

MR. WEBB: Mr. Chairman I have four amendments to clause 4, which I will take, with your permission, one by one. The first, Sir, is that clause 4 be amended by deleting subsection (1) thereof and by inserting in place thereof a new subsection as follows—"(1) Where any person is brought before a court as being apparently a vagrant, the court shall enquire into his circumstances, and if, after such enquiry, it finds as a fact that such person is a vagrant (the court may—(a) order him to be detained in a place of detention; or (b) if satisfied that such person has a home, order him to be taken to the district in which his home is situated and not to leave that district for a period of three years thereafter unless he has been issued with a permit in accordance with the provisions of subsection (2) of this section."

Sir, as my hon. and learned friend, the Minister for Legal Affairs said yesterday, this is entirely a drafting amendment, and affects no alteration of substance in the subsection. In the subsection as drafted these two alternative orders appear the one as a proviso to the other, which is technically not correct, and this redraft merely makes the position perfectly clear.

Question proposed.

Question that the words to be deleted be deleted put and carried.

Question that the words to be inserted in place thereof be inserted put and agreed.

Subsection (1) agreed to.

Subsections (2) and (3)

MR. WEBB: My second amendment, Sir, is that clause 4 be amended by substituting for the words "the proviso to" and where they appear in subsections (2) and (3) thereof the words "paragraph (b) in" and by substituting for the words "the said proviso", which appear in subsection

(Mr. Webb)

(3) thereof, the words "the said paragraph". These amendments, Sir, are entirely consequential on the redraft of subsection (1) which deletes the proviso and incorporates the substance of the proviso in the new paragraph (b) in that subsection.

Question proposed.

SIR CHARLES MARKHAM: I will be very brief on this one, Sir, but I would like to ask the Minister for Legal Affairs a question on one particular aspect. A person breaking the order can be sentenced to six months' imprisonment for a first offence or, for a second offence, or for a subsequent offence, two years. Is the Minister satisfied that this penalty is adequate in view of the difficulty quite often of the person who comes before the court as a vagrant, is then sent back to his home, and we see him back in Nairobi at regular intervals. It does say "not exceeding six months" or "not exceeding two years". So often the magistrates have ordered very light sentences and we see the gentlemen sent away returning at regular intervals. Could the Minister not agree—and I am not moving any amendment here—that there should be a statutory minimum period of imprisonment to discourage people from coming backwards and forwards, which is a cause of trouble particularly in cities like Nairobi.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, the hon. Member has made a very valid point and we have considered how best we could meet the difficulty of the returned repatriated vagrant, who sometimes arrives back in Nairobi before the escort has returned who took him back to his district. On the other hand there is in a sense, a rather limited degree of criminality in at any rate the first offence, and we felt that six months would be an appropriate figure to apply for a first offence bearing in mind that the magistrate could again extend the three-year period at the end of whatever sentence he imposed so that the vagrant's restriction to his district would be extended in point of time. Then if he returned again in contravention of the order he would be liable to be sent to prison for two years, again with a further period of three years restriction to his district after the expiry of his sentence.

On the question of a minimum sentence, Sir, jurists in the modern world and criminologists have really discarded the concept of minimum sentences and have accepted as a preferable and more justifiable alternative the establishment of maximum punishments, leaving the actual assessment of the punishment in an individual case to the discretion of the court which of course has to take into account the circumstances of the offender and the circumstances in which the offence was committed. We have therefore, Sir, incorporated in this subsection what we believe to be suitable and just maxima for these offences and we would like to, if I may use the phrase, give it a run, and if in the light of experience it should prove that these maxima are inadequate then we will certainly consider amendment to increase them.

Question that the words to be left out be left out put and carried.

Question that the words to be inserted in place thereof be inserted put and carried.

Subsections (2) and (3) agreed to.

Subsection 4

MR. WEBB: Mr. Chairman, I beg to move that clause 4 be amended by substituting for the word "ten" where it appears in subsection (4) thereof, the word "fifteen". Again, Sir, my hon. and learned friend the Minister for Legal Affairs explained in speaking to the Bill yesterday—the reason for this, which is to bring the period into line with that provided by section 203 of the Criminal Procedure Code as the normal period of remand.

Question proposed.

SIR CHARLES MARKHAM: Sir, I am just thinking of circumstances of which I know personally, Sir, whether it is possible for the period to be extended, because so often it is difficult to find out in 15 days sufficient information which might be required and particularly in the case of the habitual vagrant, if I may use such a word. We have had trouble of that in Nairobi in the past and I suppose it is possible to bring him before the court for a further remand. I do not know, Sir, but perhaps, Sir, the hon. and learned Member opposite could help me

[Sir Charles Markham]

on this. I understand the purpose of the amendment, but is it enough, again I ask?

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, Sir, the intention was that the period specified in the section should be sufficient or reasonably sufficient for the purpose of enabling the authorities to make necessary enquiries. I do not think myself that on the subsection as framed the court would probably find itself authorized to make successive periods of remand although there is no express prohibition on it. I think what the court might conceivably do in an appropriate case would be to order the person before it to be detained under subsection (5) which would be for a period not exceeding 28 days. He would by then have had to have found the person to be a vagrant.

Question that the word to be left out be left out put and carried.

Question that the word to be inserted in place thereof put and carried.

Subsection 4 agreed to.

New Subsection

MR. WEBB: Mr. Chairman, I beg to move that clause 4 be amended by adding thereto a new subsection as follows:—

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(6) (a) Any person aggrieved by the making of an order against him under subsection (1) of this section by a subordinate court of the first, second or third class may appeal to the Supreme Court, and the provisions of Part XI of the Criminal Procedure Code, in so far as they relate to appeals, shall apply *mutatis mutandis*:

Provided that the execution of an order made under paragraph (b) of the said subsection shall not be suspended pending the hearing of the appeal:

Provided further that the decision of the Supreme Court shall be final.

Cap. 27

(b) The provisions of Part XI of the Criminal Procedure Code, in so far as they relate to revision, shall apply in respect of proceedings before a sub-

ordinate court of the first, second or third class under subsection (1) of this section:

Provided that the decision of the Supreme Court shall be final.

Again, Sir, my hon. and learned friend, the Minister for Legal Affairs, explained that we were going to add in Committee a provision enabling appeals from findings of vagrancy to be made. This provision does exist in the English law and it seemed proper to include it in our law. I might, Sir, only add this: this new subsection relates only to subordinate courts of the first, second or third class, whereas the definition of "court" in clause 2 of the Bill includes African courts. The reason, Sir, for that is that in the African Courts Ordinance, 1951, there is adequate provision for appeals from any order of an African court and it is, therefore, not necessary to make this specific provision. The equivalent provisions in the Criminal Procedure Code only relate to persons convicted or to criminal proceedings, terms which are not apt in the context of this Bill.

Question proposed.

MR. MICHURA: The speaker who has just sat down said that under the African Courts Ordinance there are channels for appeal. As far as I am aware, I think it is more administrative. They go up from the African court to the district officer, then to the district commissioner, then to the Provincial Commissioner, then the African courts of review. Here it says that the Supreme Court's decision shall be final. Now, that one, as far as I am aware, is a judiciary one as opposed to an African one which is administrative. I am not legally trained but that does not seem to me to be judicial. So far as we are concerned, it is administrative rather than judicial.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Sir, the avenue of appeal is, in fact, an avenue of judicial appeal under the African courts. It is exercised, of course, by those authorities who are best qualified to be able to judge the decisions of African courts. Those authorities, of course, are administrative authorities, who are informed and experienced and trained in matters of African law and custom, and the procedure and practices of African

[The Minister for Legal Affairs] courts. The fact that the appellant authority or successive appellant authorities below the Court of Review are administrative authorities does not exclude the concept of judicial determination of such appeals. They are judicial appeals. That is, of course, as the hon. gentleman will realize, the avenue of appeal which applies in respect of all decisions of African courts. I think that we cannot really, in the limited compass of this particular subject matter, question the appropriateness of that statutory avenue of appeal from the decisions of the African courts.

MR. MUCHURA: This is a Vagrancy Bill and it concerns people who are vagrants and the question of custom does not really come in unless it is categorically said that where Africans are involved or suspected of being vagrants they will be sent to an African court to find out whether they have got ten brothers or six brothers according to the customs of the tribe, or whether the man has a brother in Nairobi. Then, of course, there may be the question of administration and customs. This is a matter for the court to decide as to whether the person is a vagrant. I do not see where the question of custom comes in at all.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): I do not think there is very much I can add to what has already been said. The fact is that administrative officers who do perform appellate functions under the African Courts Ordinance are *ex officio* magistrates and perhaps it will assist the hon. gentleman in his consideration of this particular topic if he would regard them as acting in their appellate capacity, as *ex officio* magistrates. If the hon. gentleman is attacking this, Sir, I think the subject is too wide to be dealt with adequately within the limited compass of a particular point of this nature. But I can only repeat that the avenue of appeal which will apply in respect of orders made under subsection (1) of clause 4 of this Bill in African courts is precisely the same as the avenue of appeal that applies in respect of all other decisions and orders of the African courts, including convictions in criminal cases.

Question that the words proposed to be added be added put and carried.

New subsection agreed to.

Clause 4, as amended, agreed to.

Clauses 5, 6 and 7 agreed to.

Clause 8.

MR. WEBB: Mr. Chairman, I beg to move that clause 8 of the Bill be deleted. This is the clause which enables the superintendent to require persons detained in a place of detention to work; and, as my hon. and learned friend said yesterday, this is unnecessary and perhaps undesirable, because we wish to make it clear that vagrants are not criminals and cannot be put to penal labour.

Question proposed.

Question that the clause to left out be left out put and carried.

Clause 9

MRS. HUGHES: Mr. Chairman, I beg to move that clause 9 be amended by adding after the words "suitable employment" in the second line, the words "or other necessary assistance". The reason for this is that by adding the words "or other necessary assistance" it makes it incumbent on the superintendent, I feel, to refer incapacitated persons or children to the most appropriate organization and also to find housing for them if they are brought under clause 2 (1) (c).

Question proposed.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, I think this amendment would introduce a rather alien concept into this particular section. This section or clause of the Bill imposes on the superintendent of the place of detention the obligation to attempt to obtain suitable employment for a vagrant. That employment, if it is found to be available, is offered to him and not forced upon him; he can accept or refuse it. If he does accept it, he is then discharged from the place of detention in order to enable him to take up his employment. I think to place on the superintendent of the place of detention the obligation to try to find housing for a person with no fixed abode, who is a vagrant by reason of having no fixed abode, would really be impracticable.

So far as the question of finding, possibly, relatives or charitable societies who might assist in looking after the

[The Minister for Legal Affairs] vagrant, again I do not think, with great respect to the hon. and gracious lady, that it would be wise to incorporate it in the section because it seems to me that the first possibility or objective that should be explored is finding employment. Where a vagrant is placed in a place of detention we do not want merely to have to examine the possibility of charity being provided for him. We want first, it seems to me, to explore the possibility of finding him work, both because it is right and proper that if a man is able to do work, he should do so, and secondly that in his own interests it seems to me preferable that he should be required to work or be given the opportunity to work rather than to rely merely on charity. Charity, as I am sure the hon. lady knows, can be rather an insidious benefit to an individual if he has not a very strong character: he develops a form of chronic reliance on charity and completely loses any self-confidence or self-reliance and is quite content to coast along on other peoples' money. I would suggest that we leave the clause as it is and that the hon. lady might discuss this with my hon. colleagues the Minister for Internal Security and Defence and the Minister for Local Government so that any possible arrangements that can be made to assist the incapacitated vagrant or the vagrant for whom no employment can be found could be put in hand by administrative action. I believe myself that that would be the most effective means of achieving what I know to be the hon. lady's objective.

MRS. HUGHES: Mr. Chairman, I agree to a certain extent with those words, but on the other hand there must be quite a number of these people who are incapacitated or handicapped in some way and that it may be not possible to find employment for them. I cannot see that it is any more onerous on the superintendent who is trying to find employment for them to seek assistance in other ways from some local organization.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): I think I can allay the hon. and gracious lady's fears. Under clause 10 the Minister may at any time order the discharge of a person detained in a place of detention.

If in fact the vagrant was incapacitated and if we could find some charitable organization to take charge of him I could order his discharge under that section.

MRS. HUGHES: But that will mean taking it to the Minister when it should be an administrative process.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): I think it would be carried out with the Minister's final authority.

MRS. HUGHES: If incapacitated vagrants are in detention, Sir, are they to wait until you have got sanction from the Minister? Why cannot it be purely an administrative function when facilities are available to find assistance for them through local organizations?

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): That could be done administratively. What I think would be perhaps a little bit inappropriate would be for the superintendent of the place of detention, to so to speak, discharge the court's order on such, perhaps rather amorphous, grounds. As clause 9 is framed at present he can discharge him if he finds suitable employment for him which the man accepts, which is a state of affairs, or a condition of fact, which is readily determinable. But if it is a question of finding suitable charitable assistance, then I think that, at any rate nominally under the Bill, the decision should rest with the Minister. It would be possible for the Minister to delegate that function in suitable cases if he should feel that the discretion can properly be exercised at a lower level, but I do suggest to the hon. lady that her objective, I think, can best be achieved with the flexibility and elasticity of administrative action rather than by attempting to define it in legislative terms. Knowing the hon. and gracious lady's concern and the great deal of work she does in this charitable field, I would not like her to feel that Government were opposing this amendment otherwise than on responsible and considered grounds. We could not in any event accept it without consequential amendments, and for the reason I have indicated we think we can achieve the same object probably more effectively by administrative arrangement.

MRS. HUGHES: I withdraw my amendment, Sir.

Amendment, by leave, withdrawn.

Clause 9 agreed to.

Clause 10 agreed to.

Clause 11

SIR CHARLES MARKHAM: Clause 11, Sir, subsection (6). I would like to ask for an explanation from the Minister for Legal Affairs of this particular clause. It does seem to be manifestly unfair to the individual. "The master of a ship or aircraft, the guard of a train . . ." etc. I remember a particular case of a particular person some years ago being deported from Kenya, who was put on the aircraft to take him back to England and that captain had to unload him at Entebbe, such was the behaviour of the person concerned. I do not see why, quite frankly, on this particular clause, the master of a ship, for example, should be bound to take somebody he does not want to carry necessarily, even though I understand he gets paid for it. I should have thought, Sir, that this would have been a matter for negotiation with the Government. For instance, in Mombasa, you know that a certain ship is leaving on a certain day, and you then say to the master of that ship, "You will take . . . Mr. X or Mr. Y . . ." on this ship" quite regardless of what the fellow passengers, who have paid their fees in the normal way to go this ship, think of perhaps having an unpleasant person on board creating trouble. Secondly, Sir, it puts to the master of the ship or the aircraft or the guard the question of the passage paid to his final destination and proper accommodation and maintenance during the passage. Sir, let us take the case of the guard on board the train going up to, shall we say, Kampala, who is given the responsibility of looking after one of these people. I do not see how you can tell the guard to provide maintenance for the passenger during that trip up to Kampala. Maybe I have taken the extreme case, Sir, but it does seem to me unfair that this legislation proposed today can inflict upon the captain of a ship or the guard of a train or the captain of an aircraft, whatever it is, certain duties which, quite frankly, I do not see why he should be made to do.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): The first point I would like to make is that this subsection of course does not apply to ordinary repatriation within the Colony; it only applies to what I will refer to for the sake of clarity as the deportation of a vagrant who is not a belonger to this Colony. I know that clauses of this nature do appear somewhat arbitrary, but this clause is in fact in common form and appears in virtually all deportation legislation, at any rate within the British Commonwealth. The fact of the matter is that deportees are seldom particularly appealing personalities and if you leave the discretion to the master or the captain of the aircraft to refuse to carry him, then he is quite likely to, and would in most cases, say, "I do not want a chap like that on my ship or aircraft and therefore I will not carry him." It has been found by experience, and is generally accepted by shipping lines and air magnates like my hon. friend opposite, that this obligation does go with the conduct of shipping and air business.

MRS. HUGHES: What is the position of a master of a ship or aircraft if the vagrant gets out at any other port than the port of destination? Is he responsible for that?

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): So far as we are concerned, he has got to take him on his ship and carry him at any rate out of our jurisdiction. It says, Mr. Chairman, ". . . or towards his final destination." Frankly, this is perhaps, in a sense, "pulling up the ladder" on our part, because once he leaves us we are not particularly concerned about what the master does with him. That is not a cynical attitude; it is a purely practical attitude; because we cannot do anything about it even if we wanted to.

SIR CHARLES MARKHAM: Sir, there is one point on which I am not particularly happy, although I understand the views of the Minister for Legal Affairs particularly on the reluctance of anybody to carry one of these particular specimens. If a deportation order—I use that expression so far as the vagrant is concerned—is served on a vagrant to go on an aircraft, quite frankly it is grossly unfair on the passengers if the person concerned was particularly badly

[Sir Charles Markham] people who might qualify—they are, I regret, Europeans—as vagrants, let us face it, who cannot unfortunately be deported because of their residence in Kenya, but if they could have been, frankly they would be unsuitable to travel in an aircraft, because—and let us be quite blunt about the matter—they would be a menace to the other passengers. Surely there must be some discretion to the captain or the airline concerned. Surely the air magnate—as my hon. and legal friend called him a moment ago—should have a chance to say "No, we are not prepared to have him". Otherwise, I suggest, Sir, when the Minister goes home to the Constitutional Conference we should put one of these particular bodies on board with him.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): It is by no means certain that one of those bodies will not be in the plane already.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Mr. Chairman, I fully appreciate the fears of the hon. Member, but once again we have got to look at the alternative. If there is a very unpleasant character and all masters of ships and captains of aircraft refused to take him then he is going to remain here indefinitely at the expense of the Kenya taxpayer. We would always try to be reasonable administratively but we cannot be saddled with somebody for life.

Clause 11 agreed to.

Clauses 12, 13, 14 and 15 agreed to.

Title

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): There is one point, Mr. Chairman, which I do not think calls for a formal amendment, and perhaps you would be good enough to correct what I think is a misprint by using your powers under Standing Orders. The word "provisions" should be in the singular.

Question proposed.

Title agreed to.

Clause 1

MR. WEBB: Mr. Chairman, as this Bill has been talked out of this year it is necessary to make the formal amendment substitute "1960"

for "1959" because the consideration of the Report of the Committee and Third Reading cannot take place now until the next meeting of the Council in the first week of next year.

Question proposed.

Question that the figures to be left out be left out, put and carried.

Question that the figures to be inserted be inserted, put and carried.

Clause 1, as amended, agreed to.

Bill to be reported, with amendments.

The Stamp Duty (Amendment) Bill

Clauses 2, 3, 4, 5 agreed to.

Clause 6

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Chairman, I beg to move that clause 6 be left out of the Bill and that there be inserted in place thereof a new clause as follows:—

Amendment of section 95 of the principal Ordinance

6. Proviso (a) to subsection (1) of section 95 of the principal Ordinance is amended by substituting for all the words which appear therein after the word "Ordinance" the words "been stamped with a particular stamp denoting either that it is not chargeable with any duty or that it is duly stamped; but, where, by reason of this proviso, a fee has been paid under the said section in respect of the stamping of such an instrument, no fee shall be payable under the said section in respect of the stamping of any further instrument of transfer or assignment between the existing company and the transferee company where the conditions under which such further transfer or assignment takes place are those under which the transfer or assignment in respect of which the fee was paid took place; and".

I am sure that all hon. Members will see that this amendment is completely self-explanatory and, therefore, I beg to move.

Question proposed.

Question that the words to be left out be left out put and carried.

Question that the words to be inserted be inserted put and carried.

Clause 6, as amended, agreed to.

Clause 7

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Mackenzie): Mr. Chairman, Sir, I beg to move that clause 7 be left out of the Bill, and that there be inserted in place thereof a new clause as follows:—

Amendment of section 96 of the principal Ordinance

7. The proviso to subsection (1) of section 96 of the principal Ordinance is amended by substituting for all the words which appear therein after the word "Ordinance" the words "been stamped with a particular stamp denoting either that it is not chargeable with any duty or that it is duly stamped; but, where, by reason of this proviso, a fee has been paid under the said section in respect of the stamping of such an instrument, no fee shall be payable under the said section in respect of the stamping of any further instrument of conveyance or transfer between the same companies where the conditions under which such further conveyance or transfer takes place are those under which the conveyance or transfer in respect of which the fee was paid took place".

There again, Sir, I am quite sure that the House will recognize the lucidity of this amendment and I beg to move.

Question proposed.

Question that the words to be left out be left out, put and carried.

Question that the words to be inserted, be inserted, put and carried.

Clause 7, as amended, agreed to.

Clauses 8, 9 and 10 agreed to.

Title agreed to.

Clause 1

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Mackenzie): Mr. Chairman, Sir, I beg to move that clause 1 be amended by substituting "1960" for "1959".

Question proposed.

Question that the words to be left out be left out, put and carried.

Question that the words to be inserted, be inserted, put and carried.

Clause 1, as amended, agreed to.

Bill to be reported with amendments.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, I beg to move that the Committee do report the Vagrancy Bill, with amendments, and the Stamp Duty (Amendment) Bill, with amendments, to the Council.

The question was put and carried.

The House resumed.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

REPORTS

The Vagrancy Bill

MR. BECHGAARD: Mr. Speaker, I beg to report that a Committee of the whole Council has gone through the Vagrancy Bill and made amendments thereto.

Report ordered to be considered tomorrow.

The Stamp Duty (Amendment) Bill

MR. BECHGAARD: Mr. Speaker, I beg to report that a Committee of the whole Council has gone through the Stamp Duty (Amendment) Bill and made amendments thereto.

Report ordered to be considered tomorrow.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): That brings us to the end of business on the Order Paper and I therefore adjourn Council until 1.15 p.m. on Monday, 4th January, 1960.

The House rose at thirty minutes past Ten o'clock.

Monday, 4th January, 1960

The House met at fifteen minutes past Two o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

CONGRATULATIONS ON AWARDS

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Hon. Members, before the first Order of the Day is called I suggest it would be the unanimous wish of all Members of this Council if I were to congratulate, on your behalf, our colleagues Mr. Conroy and Mr. Cowie on the recognition they have received.

PAPERS LAID

The following Papers were laid on the Table:—

The East African Industrial Research Organization, Annual Report, 1958/59.

[BY THE CHIEF SECRETARY (Mr. Coultis)]

Draft Regulations to be made under the Preservation of Public Security Bill.

[BY THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones)]

The Crop Production and Livestock (Livestock and Controlled Areas) (Amendment) (No. 3) Rules, 1959.

The Pig Industry (Registration of African Pig Producers) Rules, 1959.

The Pig Industry (Licence Fees) Rules, 1959.

The Agriculture (Scheduled Animal Products) (Producer Prices) Order, 1959.

The wholesale prices to be charged for meat by the Kenya Meat Commission during 1960.

The Kenya Meat Commission (Grading) (Amendment) (No. 2) Regulations, 1959.

[BY THE MINISTER FOR AGRICULTURE, ANIMAL/HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie)]

The Education (Fees) Rules, 1959.

The Education (Fees: Technical and Trade Schools) (Amendment) Rules, 1959.

[BY THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson)]

NOTICES OF MOTION

ASIAN AND ARAB HOSPITAL FUND OVERDRAFT

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

That this Council notes that Government proposes to guarantee an overdraft to the Asian and Arab Hospital Fund Authority of an amount not exceeding £50,000 for a period not exceeding 12 months commencing 1st January, 1960, for the purpose of providing the authority with sufficient working capital until such time as its revenue offsets its expenditure.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 51

AIR COMMODORE HOWARD-WILLIAMS asked the Chief Secretary will Government give consideration to placing our prisons under the control of the Ministry of Community Development, in that the function of prisons is now no longer a matter of defence but a matter of rehabilitation?

THE CHIEF SECRETARY (Mr. Coultis) replied no, Sir, there is not a Ministry of Community Development at present and, while rehabilitation of course is an important aspect of the treatment of offenders, the Government is of the opinion that the administration of prisons is a subject best dealt with at present by the Ministry of Defence.

QUESTION No. 22

MR. MBOYA: Mr. Speaker, on behalf of the Member for Central Province North (Mr. Mate). Question No. 22:—

(a) Is Government aware of the grave shortage of water for human and animal consumption in the Kianjai, Muthara and Lare areas of the Meru District?

[Mr. Mboya]

(b) If so, what practical steps is Government taking to remedy the situation?

THE MINISTER FOR AGRICULTURE (Mr. MacKenzie) replied:—

(a) No, Sir. The Government is, however, concerned that existing water supplies should be improved.

(b) The development of water supplies is being undertaken by the Meru African District Council which has provided a total of £3,500 in its 1960 estimates for drilling boreholes to supplement the successful borehole already installed. The African District Council also hopes to build trial rain catchments in the Lare area where rainfall is over 60 in. per annum.

MR. COOKE: Mr. Speaker, Sir, does the answer to (a) mean that Government is unaware of what everybody else in this country is aware of?

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Mr. MacKenzie): Mr. Speaker, I do not know what everybody else is aware of!

BILLS

FIRST READINGS

The Firearms (Amendment) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Excise Tariff (Amendment) (No. 2) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Crop Production and Livestock (Amendment) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

REPORTS

THIRD READINGS

Vagrancy Bill

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Mr. Speaker, Sir, a Committee of the Whole Council

has reported the Vagrancy Bill with amendment. I beg to move that the Council does agree with the Committee in the said Report.

Question proposed.

The question was put and carried.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Mr. Speaker, I beg to move that the Vagrancy Bill be now read a Third Time.

MR. WENN seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

Stamp Duty (Amendment) Bill

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir, a Committee of the Whole Council has reported the Stamp Duty (Amendment) Bill with amendment. I beg to move that the Council does agree with the Committee in the said Report.

MR. WENN seconded.

Question proposed.

The question was put and carried.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir, I beg to move that the Stamp Duty (Amendment) Bill be now read a Third Time.

MR. WENN seconded.

Question proposed.

The Bill was accordingly read the Third Time and passed.

BILL

SECOND READING

The Preservation of Public Security Bill

Order for Second Reading read.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, I beg to move that the Preservation of Public Security Bill be now read a Second Time.

Sir, I should like to refresh the memories of hon. Members as to what was said on the subject of this Bill by His Excellency the Governor when he opened the present Session of this Council. If I may quote, he said, "In the first place, we must, in the light of

[The Minister for Legal Affairs]

experience and of the lessons learned during the past years, ensure that the Government is adequately armed to deal, in the future, with situations in which public security is threatened. This involves first the introduction of measures which will reinforce the substantive law in such a way as to ensure that it provides a fully effective first line of defence against incipient lawlessness. Second we shall need to introduce measures enabling us to deal promptly and effectively with threats to public security as they may develop. What the Secretary of State has recently described as the "sledgehammer" of emergency powers under the Orders in Council will remain available in reserve should they again unhappily be required. What we need now is sufficient provision to ensure, if possible, that conditions in the country will never again be allowed to develop to the point of gravity at which it will be necessary to invoke those "sledgehammer" powers." Then, a little later in his speech, and referring to this particular Bill, His Excellency said, "This Bill is, therefore, both an insurance against future trouble and a means of giving notice to any would-be trouble makers of the Government's determination to maintain law and order and to take any measures essential to that end."

Mr. Speaker, this Bill is a relatively short one and it is a Bill the provisions of which will not be in permanent active operation but which will be there to be brought into operation by the Governor if and whenever he is satisfied that it is necessary to bring those provisions into operation for the preservation of public security. It is therefore in reserve for the protection of society because the protection of society is virtually synonymous with the preservation of public security. Hon. Members will have seen the definition of "public security" in clause 2 of the Bill. It is a compendious phrase which is defined to include those various elements of human activity which together add up to the state of security which must be preserved for the welfare and safety of the peoples of the country. It includes the safety of persons and property, the maintenance of supplies and services essential to the life of the community, the prevention and suppression of violence, intimidation,

disorder and crime, and the prevention and suppression of mutiny, rebellion and concerted defiance of and disobedience to the law and lawful authority, and the maintenance of the administration of justice. For those purposes or any of them the Governor may, should it prove necessary, invoke the powers which this Bill provides. Now, those powers are two-tiered. The first tier consists of powers to deal with a situation which has not developed to the point of gravity at which it is necessary to deprive individuals of their personal liberty without trial. The second stage is designed to cover the set of circumstances in which the threat to security is so grave that it is necessary to invoke the powers of detention of persons without trial and to require persons to do work and render services. Both these two matters are the subjects of international conventions, and even if they were not so, any responsible Government would be, and is in our case, very loth to assume such arbitrary powers, powers to trespass on these individuals' freedoms, unless it is essential for the preservation of public security to do so, essential perhaps to preserve those very freedoms in the long term.

The remainder of the Bill, Mr. Speaker, is relatively unimportant. There are additional purposes of a general nature, for which regulations may be made under either or both the first or second tier which I have described, and, as you will observe, regulations made under this Bill will have an overriding effect over other laws, to the extent of any inconsistency, so long, of course, as they remain in force. I expect we shall hear, Mr. Speaker, in the course of this debate, a good deal, as we have already heard in a past debate, on the lines that these measures, this particular Bill, are quite unnecessary. Everyone is entitled, I suppose, to their own view of that, but I feel that any person responsibly concerned with the welfare of the peoples of this country, with the safety of persons and property, the general welfare of society, of the community at large, who at the same time reflects on the course of events over the past, shall we say, eight years, the tragic upheavals through which this country, and its people have passed in recent years, and who reflects moreover on the trends and

[The Minister for Legal Affairs] portents of very recent times, anybody, therefore, who views the scene objectively, responsibly and with concern for society, will not, I believe, be able honestly to maintain that this sort of measure for the protection of society, the preservation of public security, to the extent that it should be jeopardized, is not only desirable but, indeed, absolutely essential.

I have today laid before the House, Mr. Speaker, draft regulations which it is proposed should be made on the enactment of this Bill as law. Those regulations are in six parts. The first Part deals with public gatherings and provides for a measure of control of public meetings, public processions and, to the extent to which they impinge on the Queen's Peace, any other form of public gathering. The substance of the control which it is proposed should be exercised under these regulations is not identical with that which has subsisted hitherto, either before the Emergency in the Police Ordinance or during the Emergency under Emergency legislation which replaced for the duration of the Emergency those sections of the Police Ordinance which provided for this particular type of control. In this Part of the regulations hon. Members will observe that the word "meeting" is defined and without reading the whole definition *in extenso* I might perhaps summarize it by saying that it relates to meetings held for purposes which include political purposes. The definition excludes from its ambit genuine lawful meetings for social, cultural, charitable, recreational, religious, professional, commercial and industrial purposes, even though in those meetings there be political purposes served but provided that those political purposes are directly related to and limited to the real purposes of the meeting, that is to say, social, cultural, charitable purposes and so forth. In other words, if the political purpose is incidental and generally relevant to the main purpose of the meeting, then that meeting will not fall within the definition.

Now, meetings, that will be subject to the control are meetings, within the definition which I have referred to, which are also "public meetings" within

the definition of that phrase, which means any meeting held or to be held in a public place and any meeting which the public or any section of the public or more than 50 persons are or are to be permitted to attend whether on payment or otherwise. The mechanics of the control will be very similar to those that subsist at the moment, that is to say, applications will be made to the District Commissioner for licences, and he has a certain discretion as to whether or not to grant such applications. The grounds on which he can refuse are that the meeting or public procession, if that be the occasion for which a licence is sought, is likely to prejudice public security or to be used for any unlawful or immoral purpose. He can also refuse a licence in certain specific circumstances—two, in fact—which are set out in the proviso to that particular paragraph of the regulation, namely, that someone or some body connected with the sponsoring of the proposed meeting or procession has recently been found guilty of having contravened these regulations or any other provision of law in relation to a public gathering; secondly, if the meeting or procession for which the licence is sought has been advertised or publicized prior to a licence being obtained.

There is provision in this regulation for an administrative officer or a police officer of or above the rank of assistant inspector to close a public place, in the sense of preventing access to it, if he has reason to believe that an unlicensed meeting or procession is likely to be held at that place; with a proviso that no person is by reason of that particular provision to be denied access to any place in which he normally resides or has his place of business or work or employment.

So the extent to which these powers will need to be exercised will depend entirely on the course of events and the nature and manner of public meetings which are held with licences, and only if it is considered necessary in the interests of security to withhold licences or to impose restrictive conditions on licences which are granted, only to that extent will the control operate to deprive any person of the opportunity to hold meetings or processions.

[The Minister for Legal Affairs]

The next part of these regulations—Part III—relates to villages. This part makes provisions for the continuance of a measure of control of those areas in which as hon. Members will remember during the Emergency it was found necessary to concentrate the inhabitants in villages in order to exercise adequate security supervision and control. It had been hoped that it would not be necessary to perpetuate or prolong this control under this form of legislation at any rate. But it has been found necessary. As you will appreciate, Mr. Speaker, the area to which this Part will apply, namely the Kikuyu native land unit, is the area in which villages have been established for the purposes of facilitating the necessary security control and they are the areas in which there are still many thousands of ex-detainees and a large number of very recently released ex-detainees. And, of course, there are still a number of persons in detention custody, who will remain in detention custody but whom the Government is exercising every effort to rehabilitate to the point of release. They too will be returning, and primarily to this area. The movement out of villages on to planned consolidated holdings is proceeding. It has been proceeding for some time but it must proceed on a phased programme, otherwise the whole purpose of the operation will be defeated. And, therefore, for the time being, it is necessary that there should be a measure of control in relation to villages in the Kikuyu native land unit.

Part IV of the draft regulations relates to the control of political societies. This again is slightly different from the control which has operated hitherto, but it does provide for political societies to be refused registration if the membership of the society includes or may under its constitution include persons residing elsewhere than in such area, if any, as may for the preservation of public security be specified in respect of that society by the Minister. It is not essential that the Minister should specify an area in respect of any particular society, and if he does specify it he does so on express grounds, namely, for the preservation of public security. It is to be hoped that the need which exists at present for this form of restrictive control will diminish

and eventually disappear. At the moment there is no question, however, in the minds of the Government that this control is essential.

Part V of the regulations provides for the punishment of terrorists, that is, those terrorists who now remain still at large, having failed to take advantage of the extremely generous offers that have been made to them from time to time during the Emergency, and particularly of the final extremely generous offer made to them in the course of His Excellency's speech to this Council on 10th November, which gave them the chance to give themselves up before the end of 1959, and thereby to avoid the consequences of their own terrorist crimes—consequences they will now face if, and when they are brought to hand, and no man, I think, could say that, having so despised the generosity of the Government as to fail to take advantage of this final offer, any of these people will be deserving of any sympathy if, and when, they come to hand and are faced with the retribution of the law.

That, Sir, is a blunt nail sketch of the regulations which it is proposed to make under this Bill. I do not think anyone, again approaching this subject dispassionately, objectively and responsibly, will really challenge, with any degree of substance behind the challenge, the necessity for these provisions. They are made in the form of regulations under this Bill, and they will remain in being only so long as they are needed for the preservation of public security. But, let us make no mistake, the trends and portents in this country are not such that with the demise of the Emergency powers which have sustained us over the last seven years and a half years, any of us can afford to hold our hands in complacency and say, "That is an end, security is now re-established and beyond menace", because that is not the case. We must not blink the facts. We must be realistic and, both as we are, both as we shall continue to be—to restrict personal liberties, nevertheless the liberties of the minority who threaten security are of less account than the liberties of the vast body of law-abiding citizenry of this country, which these measures set out to protect.

Mr. Speaker, I beg to move.

Mr. WIDD seconded.

Question proposed.

Mr. TOWLET: Mr. Speaker, Sir, I beg to apologise because I have a throat ache as the aftermath of our holiday, and I only want to say two things. One is that if we oppose this Bill, which is bad *in toto*, the people who have been under the Emergency regulations will complain. They will say we are trying to stop the Government from removing the Emergency. And, Sir, if we accept it, what we imply is that we are subjecting the whole country to a sort of modified Emergency regulations, so I do not know. I find myself placed on the horns of a dilemma. I do not know whether to oppose or support it because it is terrible. Without the K.E.M.'s I would not have accepted the Preservation of Public Security Bill, but with the K.E.M.'s I would like to say we do not know what to do. If the whole thing is passed now and nobody talks, and then we have a Third Reading, we shall have the whole thing finished.

Mr. Speaker, I will reserve my views about it.

Mr. ODINGA: Mr. Speaker, Sir, I rise to oppose, and very strongly indeed, this very unnecessary Bill.

Mr. Speaker, it is only a month, I think, ago, when the Government declared their intention of removing the Emergency measures, and I understand too that this Bill is conditional on the removal of the Emergency measures, and if these could be the conditions upon which the Government could remove the Emergency then I am saying here that there is no use in removing the Emergency or declaring that the Emergency is over. It is still going on, and there is no end to it. It will only be that the Government will announce in the Press and to the public that the Emergency is over, and all the measures, all the regulations and everything that goes along with it will be retained in the substantive law.

Now, Mr. Speaker, I will start with clause No. 2 of that Bill, and if I am allowed I will just read shortly. "In this Ordinance the expressions public security includes securing of the safety of persons and property, the maintenance of supplies and services essential

to the life of the community, the prevention and suppression of violence, intimidation, disorder and crime." Well, I will stop there, Mr. Speaker. I should think that if the Government had not made enough provisions for dealing with such crimes, then I am sure that the Kenya Government had not done its duty, but having gone through the law books and other ordinances of the Government, I think the Government has got more than enough provisions for dealing with the ordinary crimes, and also for keeping safety of person's property is very adequately provided for in the ordinary law of the country. The maintenance of supplies and services essential to the life of the community—and all these things I think the Government has got proper and adequate provisions in the law, and I do not understand why they need again special laws to deal with them.

Now, Mr. Speaker, I come to the second part, or the last part—"the prevention of suppression, of mutiny, rebellion and concerted defiance and disobedience to the law and lawful authority, and the maintenance of the administration of justice." Mr. Speaker, there I will only question one thing. The lawful authority. Well, the lawful authority means the authority as instituted by the law which is at the same time brought about by the popular opinion of the majority of the people of the land. If it is the law which is only merely imposed on people, it is not the law of the people, and therefore the people are justified to challenge that law. Here in Kenya we have got an authority at the present moment, but that authority is a foreign Government, and as such we are fully prepared, and we are entitled to question, some of the acts of that authority. In the eyes of some people it would be the lawful authority to carry on, but in our eyes we still see that there is a lot of things which should be challenged, and as such I do not think that we should be made by force to accept it as being the lawful authority, or to accept everything that that Government brings on us when it is not our popular Government in this country. As such, Mr. Speaker, I do not think that prevention of mutiny, rebellion and concerted defiance and disobedience to the law is all that this Government should be busy with, and

[Mr. Odinga]

prevention by only an imposed legislation will not be enough. The Government needs completely to go right deeply into the root causes of those things which create mutiny, which create rebellion, and try to get rid of them. There are so many countries where such laws are not necessary and people are living quietly and happy simply because the Government is not busy to form these unnecessary and superfluous laws, but they are only carrying on with the work of trying to solve the difficulties and problems of the people in the country. I do not think that even suppression alone will do anything. Suppression alone has not proved to be the solution of any problem anywhere.

Now, Mr. Speaker, let me come to section 3 where we have got all those restrictive and suppressive measures being enumerated, and, Mr. Speaker, I hope the Minister for Legal Affairs will excuse me because he says that the man who speaks his language is the most responsible and probably the proper citizen for this country, but I do not think that he should take that to be the right thing because there are people who might disagree with these points and yet they are just as responsible as he himself is responsible. On this particular part of it I am putting it that as section 3, paragraph 2, subparagraph (a) is where the provision is made for the suppression of free speech and free writing, and this, Mr. Speaker, I say that under the present law we have got adequate provision where if somebody has made sedition or-if he has written seditious matter, there are laws enough to deal with that man, and I do not know why we should need further legislation. I am sorry that I was not in when he was explaining, but he will probably not mind going over it again to explain to me thoroughly and convince me why he should need again to strengthen or to emphasize this law which is already provided for in the present statute law of the country.

Now when I come to what is more irritating to the Africans and that is part (b) of that subheading, which makes provision for the prohibition, restriction and control of the assemblies—and the Minister in his explanation made it perfectly clear that it would be necessary

to retain the present controls and restrictions on meetings and assemblies in the African areas.

Mr. Speaker, I hope the time has come when we are moving away from this discrimination law and we are getting ourselves more or less on a national basis and trying to make the laws which suit the whole country and not one particular section of the community. Now this is where the African public, although somebody will say that this will apply to the whole country, they know pretty well that other communities will not be affected by this particular law. It is entirely being introduced as a result of some experiences, painful experiences which some people have probably acquired during the Emergency and partly as a result of the grudges which some people are still keeping as a result of the Emergency.

Mr. Speaker, anybody who lives in the African areas will know how these restrictive and suppressive measures are so provocative to the African politician and more or less to the Members of this House. They are so provocative and humiliating that they are absolutely unnecessary and they cannot breed any co-operation which we talk about in this House. I do not see the necessity when I want to speak to members of my own constituency that I should go to the district commissioner and ask permission every now and then, and get his consent in order to meet with my constituents. This is something which is incredible and we do not understand what is really behind the whole thing.

At the same time we are restricted, and we cannot easily address meetings in other areas of the Colony. We cannot go to other constituencies to address meetings and this, I understand is going to be maintained. That is only helping to keep the Africans divided. If there is anything which keeps the Africans divided, this is the best instrument used by the Government, because they know that by our movement all around it will bring all our policies to be uniform throughout the country. I do not understand whether this means security or whether it means trying to suppress the African national movement. If the Government under the pretext of public security is trying to suppress the African legitimate national movement, I am sure

[Mr Odings] and I should tell them that they will not succeed, they will not succeed in doing that. The best thing is let us organize the people throughout the country. Let us organize their voice throughout the country and let them express their legitimate demands on a proper basis. That we can only do if we have not got so many restrictive measures as we have at the present moment. I do not see the reason why I should ask each time that I want to go to a meeting in Mombasa, why I, a man from Kisumu should have to send an application to Mombasa to ask the district commissioner to give me permission; the district commissioner then writes back to me granting his consent, and later on I must be ready to go to Mombasa to speak. Of course, it is a long, long affair and it costs a lot of money: it is an unnecessary procedure.

Even in our own areas at the present moment if I want to hold a meeting I have to ask for permission from the District Commissioner and then wait for an answer for about a fortnight, sometimes I only get permission within two days of the meeting, and sometimes within only one day of the meeting. That I always take to be the method that Government wants to use in trying to discourage people coming to our meetings, and so that we shall not have time at all to advertise the meetings; this is the amount of control we have on the meetings with our constituents. I suppose the Government are under-rating the understanding of the African people. I think it is time the Government understood that these African masses are not what you people think they are. They are much more well informed than you think. They know definitely when they see, for example, in the places where they have to meet, the police standing outside to stop people coming to the meeting, trying to turn people away saying that the hall is completely full, no more can come. They understand that the Government are fighting so that they should not be well informed, that they should not know what is happening in the country. The Government want to keep them ignorant.

I think we should show the Government that the people understand more than they think they do. The Government has got all the propaganda

machinery; they also try to spread all sorts of propaganda to these people, but they will only accept what you are saying if they are satisfied that it is true. This should show the Government, that mere propaganda will not succeed with these people. If we politicians give the people mere propaganda they will not listen to us. They have their own understanding, they have got their own opinions, they will know what is right and what is wrong. They will only take their own decisions. They will not be rushed, as some people think, they will not be rushed into doing things.

Now, Mr. Speaker, if I may be allowed, I should say that if this particular Bill is made part of the law of this country, even if it is temporary after the removal of the Emergency, we know that the African public will not regard it that the Emergency is over. They will not regard the Emergency as over, they will know that the Emergency is on even in South Africa, where people think that the Africans are worse treated than in any other area. I understand—and recently I was passing through South Africa—I was told that there was no restriction as we have here in Kenya. They have no tape recordings in their meetings, they have not got all sorts of restrictive measures as we have got in our meetings in Kenya, and therefore I do not see why Kenya should be worse than any other place. With the mere fear that if restrictive measures are not applied that there will be again the return of the Emergency, I do not think that these legislations are the ways in which you can stop the Emergency coming back to Kenya or violence coming back to Kenya. I think by these legislations that you are encouraging the time when the situation will again be very bad, because some people are keeping grudges and they are reminding other people that we are still in a crisis, long after the Emergency has stopped. Government must understand that it is still retaining it by these restrictive practices. It is only trying to retain the ill feeling which is very bad for the creation of harmonious relations in this country. It is time, and I always say it, it is time we all forgot, Mr. Speaker, the past. I know very well that people have learned their mistakes during the Emergency. The Africans have learned by

[Mr. Odings] their mistakes, the Government have learned a great deal by their mistakes and, indeed, the European citizens have also learned by their mistakes, in fact all people have learned by their mistakes. It is time we forgot what has happened in the past, let us declare the Emergency all over and let us start all over again. Let those people who are still lingering behind iron bars come back to their homes, let them come and let us forget completely what has happened and start all over again. That will help to create the necessary atmosphere which is very essential if you want to create a good government in Kenya and a smooth racial co-operation in Kenya.

Now, Mr. Speaker, I am against every section of this Bill and each time I look at this Bill I am startled; each clause of this Bill is startling. I come to section 4 where it is said that the Governor will still retain the power of detention. He feels that the power which is given under section 3 is not enough and he is given further powers of detention of people by just declaration and at the same time he is empowered to make laws or provision for asking people to do free labour or forced labour.

It is only recently, Mr. Speaker, when we talked here a great deal about this forced or free labour. We talked at length and it was the only time when all the Members from this side all combined together and they said that the time had come, that free labour or forced labour was most unnecessary as this country was not in its backward stages. Everyone pays taxation and there is no need at all why some people should be made to do free labour when others are not prepared to do it. I know that the Minister will probably interpret it in another way and say that that is not exactly what it is meant for, but we understand always and we know your method of interpretation. Interpretation in this House is always different from the interpretation outside this House, and I can give you one instance which I got just recently: when I was in this House I was told that an African could move with five bags of maize and when we got outside we found it was only one or two bags.

I will not go on too long because I think that if I went over each item here it would take too long a time and I think that the whole thing is thoroughly unnecessary. You know it would suffice if I said that the whole thing is thoroughly unnecessary and that all provisions made here are already in existence in the substantive law and that is enough to deal with all the crimes which may occur; otherwise if we accepted this Bill, it would mean that previously Kenya was doing without any laws to deal with criminals, yet in 1952 the Governor was competent to declare the Emergency in Kenya.

With these few remarks, Mr. Speaker, I beg to oppose this Bill.

Mr. OT. TITIS: Mr. Speaker, Sir, I rise to make a few comments on this important Bill before the House. First of all I would like to say that personally I would like very very much to oppose the Bill. My reasons for opposing the Bill are that I know that people in some quarters will be very much worried over the introduction of such a Bill and some will interpret it in their own way, as a way and means of trying to prolong the sufferings they have undergone during the Emergency Regulations for the last seven years. But this is not the case, Mr. Speaker. The main reason is that the people who are most affected by the Emergency, the Kikuyu, Embu and Meru, who have suffered more than anybody else in this country, have been led to believe by His Excellency in his opening speech of the present Session that Emergency Regulations will be lifted. But on the other hand the Government is intending to introduce from the backdoor another law to replace the Emergency Regulations. Now, if we look at the present Bill from the human point of view we can make our own interpretation out of it: whether the Kenya Government, or Her Majesty's Government for that matter, implies that the African as such is not concerned very much with the preservation of public security, the people of this country, the people who during the Emergency, the Africans, have suffered most than anybody else; they have lost tremendously in the way of property, life, to rid this country of those who were out to go against the law and lawful authority. We are the people who have suffered most than anybody

[Mr. ole Tipis]

else and we are concerned to preserve and to avoid any recurrence of this nature, and even if, I may say so, during the last two world wars we armed ourselves, we joined our Government, to try and crush the enemy who was just on our own doorstep. Why did we do it? Because we believe in living in our country peacefully, in getting rid of the evil, the enemy, whoever is out to destroy whatever we value most, and not for anything else.

Now, I think that the Government should be a bit more realistic, more conservative, in trying to go into the root causes. What makes certain sections of our community to be against the Government? Are they law abiding or is there somewhere something bad in the present Constitution of our Government which makes these people to go and try to undermine the Government? This is something serious. We have all suffered. We do not want to see another Emergency declared in Kenya. That much I can tell you, Mr. Speaker, from the bottom of my heart and that much I shall always say and maintain that I stand to fight for that, so that we should not be subjected to such sufferings again, to such loss of life and property and destruction, for that matter. We are very very much concerned, but do we believe or does our Government believe that by cutting across the personal liberties of a certain section of our country's society, in trying to introduce some measures, then that will more or less deter those who are going to stand on their legs to defend what they think is their rightful heritage as human beings. We should try and consider that very very seriously. Even before the Emergency, even before the outbreak, before the Emergency was declared, we had quite a number of persons detained under the laws of this country for more or less trying to go against the Government or breaking the law of the country or being a danger to public security. They were detained and deported. If such people were deported and detained not under Emergency Regulations then surely those Regulations still exist today and the Government is fully armed and has got all the laws and regulations in its powers. But when we go and tell our people that we have now lifted the Emergency, that all

the same we are giving a new name, we are introducing a new Bill, give it a new name, not the Emergency, it is only a name, and mark you, Mr. Speaker, with a child it does not matter whether you call him the worst name you could think of, such as "Hyena", the child will still grow. So when you call this Bill the Preservation of Public Security Bill then it is only the change of a name, but the old Emergency Regulations are all enacted in this new Bill when it becomes law.

Now, I should have thought that we on this side of the House and the Government on the other side of the House have learned that we cannot all keep on pulling one another. It is no good for them; it is no good for us either. The only thing we can do is to try and educate our people. It is up to the Government to try and win the confidence of the people and for us also on this side of the House to win the confidence of our Government so that we do not try and bluff one another by introducing legislation of this nature, because we will not get anywhere that way. This is something which I highly doubt.

I do not want to repeat quite a bit of what has been said by previous speakers but I should have thought that the best solution now would have been for the Government to declare the Emergency at an end and with the existing laws and regulations the Government could always and has always had sufficient powers to deal with the "bad hats". The Government has always had sufficient power to deal with those persons disturbing public security. And even if it has not got all the powers then surely when the Government declared the Emergency in 1952 I do not think it took them even 24 hours to decide, and they just took the necessary action. But why introduce legislation now which would empower a police officer, a district commissioner, or an administrative officer for that matter, to do this, because I think there is a clause to the effect that such powers are given in this Bill which could be delegated as the Governor may decide; and that, of course, does imply that the administrative officers and the police will have such powers. Surely we have learned a lot from the last seven years. The Government has also learned. We have

[Mr. ole Tipis]

also learned. Having learned, it is true, our lesson in a hard way, I should have thought it was time for all of us to rescind and to retrace our footsteps.

If I may now touch quickly on the various clauses of this Bill, I see under clause 3 (2) (a) that it reads "make provision for the prohibition of the publication and dissemination of matter prejudicial to public security, and, to the extent necessary for that purpose, for the regulation and control of the production, publishing, sale, supply, distribution and possession of publications". Now, this clause implies that the people of Kenya are immature to digest for themselves what is bad and what is good. I know that there can be some publications which are dangerous, which can inject bad feelings and dissonance into the minds of the people. But if that is so, if the Government is strong enough it should at least be in a position to prevent the entry of such documents into the country. It should do that. Or else if such documents are published in this country then of course the Government should at least have some way of publicity in its broadcasting system and so on to educate the minds of the people, the minds of the inhabitants, that this is the right thing, and that is the wrong thing. Under the same clause, subsection (b) it makes provision for the prohibition, restriction and control of assemblies. Surely, Mr. Speaker, this is a complete denial of the expression of the individual's views, and also the complete denial of freedom of assembly. We have heard it and we have seen it, that in most cases people who have suffered most under the Emergency Regulations are the African Elected Members. We are placed under all sorts of restrictions. When we apply for a meeting it takes us so many days to get the licence and somehow or another we are placed in different categories. Some of us are told: "Well you can only address a meeting here and not there," whereas our colleagues on this side of the House have had a free movement from a constituency to a constituency. They have also gone on making such damaging statements, damaging us, damaging our community; but all the same they have always been considered as less dangerous than we are. I should

say, Mr. Speaker, that clause 3, as it stands, is on the whole a very dangerous clause because unless we believe that we in Kenya, the people who inhabit this country, are at loggerheads, or are in a state of war, between the various communities, those communities who form the Kenya society, then I do not see why such a clause should be introduced at all or why such a clause should be introduced, because we might argue that this will be necessary to make it possible for the apprehension and trial of persons offending say, for instance, against the preservation of public security. But even now do we not apprehend people who break the laws of this country? Surely we do it and we have got enough powers to do it. You may say that it is for preserving public security but this is quite questionable security because unless we remove the causes of that insecurity then I do not know how we should try to insure against something which is not there.

Now, under clause 3 (f), where it reads, "make provision for empowering such authorities and persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations may be made". I did not hear the hon. Minister for Legal Affairs specify as to what sort of authority he is referring to under this clause. He should have at least enlightened the House by specifying the authorities; whether local government, or the Central Government, or, if it was administrative officers, then who were these other persons whose provision will be made empowering them to introduce such measures.

Now, Mr. Speaker, the other thing which ought to be considered and considered also very seriously, as I said earlier, we are all concerned; the Africans in the old days were all concerned for the preservation of public security and they were dealing with those who broke such customary laws; they were severely dealt with and we have even, in the modern days, proved that we, as a community, are law-abiding citizens and we can always be called upon to help whenever it is necessary to preserve the law and order of our country and we have done it and we will continue to do so. But if, on the other hand, the Government has not

[Mr. ole Tipis] got the confidence of our people, or if we, as a community, have no confidence in the Government of the country, then the people can only try to say, "Well, this is for the preservation of public security, knowing full well that it makes a lot of noise, trying to sort of undermine the Government of the country. You can always make any excuse you may wish to, but such excuses or, for that matter, such arguments, are always questionable because even in the preservation of public security in this country the only people in overwhelming numbers who are engaged in the preservation of law and order are the Africans. They form the majority of the forces, the armed forces and the police forces, because they know that it is for the country's good. Of course, you try to say, "Well, let us remove the Emergency now and we shall always have powers in store to prohibit public meetings to have powers to detain so-and-so because he is becoming a nuisance in the eyes of the Government, because his speeches are inflammable and dangerous; and because he speaks what he thinks or what the people he represents demand of him, then surely that is not the sort of preservation we want at all. Unless—and I repeat, Mr. Speaker—unless we try to be impartial in such legislation—we have heard it so many times, so many Members, not African Members only, but European or Asian Members for that matter, have gone and addressed political meetings trying to accuse the African Members as the main cause of the present situation, and they have been allowed to go scott free. But whenever one of us at least goes and applies to hold a meeting, say, at Kisumu or Mombasa for that matter, he is told, "No". This sort of discrimination is what is doing us a lot of harm and I would ask the hon. Minister for Legal Affairs to at least try and go into this Bill carefully; to try and see whether the passing of the present Bill is going to help us at all in preserving public security in this country. What the Government should do is to try and remove the causes which make this sort of insecurity breed, make the people of this country, the majority of this country's inhabitants, feel that they are part and parcel of the Government of this country. But if they can more or

less think that simply because it is a foreign Government they can oppress or try to oppress the people further and further—then it is high time the Government modified its attitude because people will be compelled by unavoidable circumstances to say, "No, this is becoming too much. It is becoming intolerable." I am not for one moment suggesting that our people should be made to feel insecure—not for one moment. But at least, as a start, now, let us declare the Emergency at an end. Let us state that if there is a threat to public security, then we can always come and ask for new legislation if necessary. But I do not see that it will be necessary. Let us make these people feel that having healed the wounds of the past we start afresh. We start afresh. They have suffered. The Government has also learned its mistakes. We have learned our mistakes—so we begin afresh.

Now, I know that most people are waiting anxiously to hear the outcome of the present Bill. But do not let us try to deceive ourselves. Do not let us try to pretend. If the Government feels that it cannot do away with the Emergency, which I do not see why it cannot—I mean, the Emergency is almost over, it is almost over and we can declare it at an end and forget all about the Emergency regulations. Even in the past, since the British Government took over the Government of this country for the last 50 or so years, they have always preserved the public security without any Emergency regulations. But now, having suffered in the last seven years, they come forward—they know that the Emergency regulations have outlived their time—and instead of removing them completely they come and say, "Well, we want something to be a sort of an insurance for the wrongdoers or those who might threaten public security." What for? We are not here to threaten public security at all. We are here to preserve it and it is a team job for those on that side of the House and on this side of the House. But the more we create these laws every day, surely I do not think that it is helping us a lot.

Now, Mr. Speaker, with these few words I beg to oppose.

MR. MBOYA: Mr. Speaker, Sir, in intervening in this debate I am well aware

[Mr. Mboya] that most of what we have to say this afternoon has in fact been said time and time again in this House in the last three years or so. I am also aware that during the debates on the Governor's speech that similar remarks or observations were made especially when he had intimated that the two Bills would have to be passed before the State of Emergency comes to an end. I would like to say very emphatically that the African community is the most pleased to hear—especially to have heard His Excellency announce—that the State of Emergency would come to an end. We are pleased that a State of Emergency should come to an end because for the last eight years our community has lived under this State of Emergency and more than anyone else in this country have suffered greatly in person, in property and otherwise. We cannot therefore oppose the Government's desire to bring the State of Emergency to an end.

But, Sir, it is at this point that we part company with the Government because in their intention to abrogate or to bring to an end the State of Emergency the Government has seen fit to introduce legislation which most of us believe, and we have not yet been convinced that we are wrong, believe very emphatically that Government is in fact retaining the same powers under the guise of this particular piece of legislation, the Preservation of Public Security Bill. Now, it is very likely that our critics here and elsewhere will say that we oppose this Bill, mainly because we have built an opposition mentality and secondly because we are not interested in the preservation of public security. We have seen this stated here and elsewhere so many times in the last three years. I want, if I may, to dissuade our critics from any such belief because like everybody on the Government Benches and in this country we are greatly interested in the preservation of public security. Now, public security, I presume, would include security for the Africans. In the circumstances it would be not only ridiculous to suggest that we would be against it but rather suggesting that we are not in the least concerned with the interests of the people we represent in this House. I want therefore most emphatically to state that, like the Government and everybody else, we are

greatly interested in the question of the preservation of public security.

However, we strongly question the Government as to the methods that they wish to use. We are concerned that arbitrary powers should be granted in circumstances in which such powers are not really needed. We wish to draw the Government's attention to the status of things in 1952 when it was found necessary to introduce and declare a State of Emergency. Sir, it is my humble suggestion that that state of things does not exist any more in this country and that what we are really dealing with is the fear that something else might happen in the future. It is my suggestion that whether we have these laws or not, if there is going to be a worsening of the relations between the races in this country, if there is going to be a worsening of the relationships between the Government and the people of this country, this is going to happen with or without this piece of legislation because I do not believe that the relations between the Government or between the races are going to be governed merely by the existence of some legislation. There are factors which will determine and which must determine what sort of relationships are going to exist between the Government and the people of this country and there is no need for me here to repeat some of the things my colleagues have said or even to try and persuade the Government to agree with me that certain factors exist which alone will determine what sort of relationships are going to exist between the Government and the people of this country because we all know what these factors are. We are trying to deal with them and I suggest very strongly to the Government that we would rather concentrate on creating the atmosphere and the conditions in which there is going to be confidence, respect, and general acceptance of preserving public security by everyone concerned and in the interests of everyone concerned. The moment we create a situation in which some section of the community begins to feel that certain measures exist merely to penalize them or to deny them their normal, legitimate political and civil rights, then, Sir, we have created an issue and we are undermining the conditions, the atmosphere and the circumstances which we

[Mr. Mboya.] must create if we are going to introduce into this country and maintain a state of affairs that will help preserve the public security.

Mr. Speaker, I have read in the Memorandum of Objects the first paragraph which says, "This Bill repeals and replaces the Emergency Powers Ordinance". Now, Sir, do we really need to repeal and replace the Emergency Powers Ordinance? The Emergency powers were introduced because a State of Emergency existed. If that State of Emergency—it is the Emergency regulations we are dealing with—I see the Minister shaking his head—I will give way.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): I would just like to correct the hon. Member who, I think, is suffering under a misapprehension. The Emergency regulations, which have been in force and are still in force, have been made under the Emergency Powers Orders in Council. The Emergency Powers Ordinance which this Bill will repeal and replace is a statute on the Kenya Statute Book which has not been invoked in the present Emergency.

Mr. MBOYA: I wonder whether the Minister thinks this explanation was really necessary but maybe for the sake of the public it is of some interest. The point I am making and which he knows is perfectly right is that the regulations which we wish to see come to an end at this particular time were proclaimed or brought into effect in 1952 as a result of an Emergency situation. Now, the Government at that time considered that a situation arose in the country which required and justified the introduction of certain legislation or regulations, whatever you like to call them. My question is, do those conditions exist now? And I submit that the Government and ourselves are satisfied that they do not exist and that is why everybody is particularly interested that there should be a change in both the legislation. Now, the question that really arises is whether the Government should as the Minister put it "arm" itself—arm itself—with this new piece of legislation, the Public Security Bill, in order to meet exigencies that may arise in the future. Mr. Speaker, in order to justify this piece of legislation the Gov-

ernment has to convince us that in the present situation if they were to declare the State of Emergency at an end and without introducing new legislation they would be completely powerless to do anything in the case of any new situation arising. So far the Minister has not even attempted to justify this in those terms. The Minister has not even shown us how powerless the Government is in case there should arise another situation in the future. And my submission is that if the Government were so powerless they would not really have been able to act in 1952 unless they had put into effect legislation of a similar nature. The fact that they were able to act in 1952 and in subsequent years suggests that the Government is already having enough powers to act in the case of a similar situation arising in the future.

We have been told by the Minister—and indeed it was intimated by the Governor in his speech—that we need not fear the introduction of this legislation because it would not take the form of permanent legislation to be applied on a day-to-day basis. I question this particular point very strongly and especially when only this afternoon the Minister has laid on the Table certain regulations to be made under the Preservation of Public Security Bill. These regulations are of a continuing and permanent nature. They are not regulations merely to be applied as and when a situation arises. The Minister is shaking his head again, but I draw his attention, for example, to the control of public gatherings. I am not sure that the Minister is suggesting that these particular regulations under this Bill would only be applied as and when the Governor thought that some threat was possible in a particular application for a licence for a public meeting. My understanding of these regulations is that they are going to be permanent and they will apply on every occasion. Sir, if that is the case what is going to be the real difference between the present situation—and the future? In fact, if I may suggest, whereas today the difficulty we encounter in respect of public meetings has mainly been justified on the grounds of the Emergency, tomorrow after we have passed this legislation, this will be no longer a temporary situation, nor will it be an Emergency situation. The saddest

[Mr. Mboya.] thing, as far as this legislation is concerned, is in my view that we are seeking here to introduce into substantive law, regulations or legislation that might otherwise have been justified under a temporary Emergency. The result is that we are removing the demarcation between the ordinary law embodied in Ordinances and Emergency or temporary situations that may arise from time to time. Instead, we will have no reason in the future, if I may suggest so, even to declare a State of Emergency because we are arming the executive in this case with permanent powers to do as they like, to interpret a situation as they like, without even recourse, Sir, to this House.

Members will remember that when the Emergency was declared in 1952 at least most if not all of the regulations were debated in the House—at least, an opportunity was given for the elected representatives and the public to discuss some of the regulations that were introduced. In the present situation, with this law passed, the Governor will in fact have the right as and when he sees fit on his own assessment of the situation not necessarily declaring a State of Emergency but act on a similar basis as he would under a State of Emergency. The Minister referred in passing to some international obligations that may be involved in this particular situation. I am not sure which one he was referring to but I think that where the legislation is going to affect detentions, and especially detentions or restrictions without trial, there is the Convention of Human Rights and Fundamental Freedoms. The British Government is a party to this Convention and has promulgated it in respect of 42 countries which include Kenya. Under Article V of this Convention it is prohibited to imprison anyone without trial. It is true that Article XV of the Convention derogates from this particular obligation where a State of Emergency or a war is involved. I am not sure that this is the particular one that the Minister was referring to but my only observation on this is that in future it will be possible if this legislation is passed to derogate Article V of the Convention without even declaring a State of Emergency and only on the basis of the Government's own assessment of a situation, and whether they think that a state threatening the public security is involved.

Mr. Speaker, there is also the question of the rule of law involved in the provisions of this Bill and it is my contention that it is in fact subversive to the whole system of the rule of law. It touches on certain basic and fundamental principles that should be respected under normal conditions. Principles that should be respected if we are to develop in this country, a democracy based on the normal conceptions of democracy and the protection of the political and civil rights of all the citizens.

Mr. Speaker, the African Members have a right to feel uneasy about this legislation and as my colleagues have already indicated one of our main fears is not just the wording, the phraseology or the interpretation by the Minister here of this legislation. One of our real fears is the customary interpretation or implementation of the legislations passed by this House. I feel we have a right to express the concern of our community that whenever legislation of this kind is passed, however well couched in words aimed at reassuring the public, in practical implementation it is often the African community which is on the receiving end. Now, for example, the Bill deals with the question of what my hon. friends have referred to as communal labour, compulsory labour or free labour. Now, I do not know whether it is envisaged that in future it will be possible, for example, to have situations in which a European or a group of Europeans might subject to this legislation be asked to do some special labour, communal labour or forced or compulsory labour. So far as I am aware in the past this has not been so. In the application of the Emergency legislation that we are now dealing with, it has been quite obvious that the African has always been on the receiving end. Even where we have had curfews or where we have had compulsory requirement for people to show passes or to show identity cards, we are aware that it is the Africans who are normally—normally—stopped—in—the—streets—and—in—the locations and asked to produce these documents. It may be said that the Europeans are very well behaved and they need not be treated in the same manner as the Africans but I too want to submit that there are some Africans who are as well if not better behaved

[Mr. Mboya]

than some Europeans and if the distinction is on the basis of behaviour then they should have received the same treatment. But maybe it will be said that because they are all black it is very difficult to know which one is "white". If that is so, it reveals very clearly the dangers inherent in passing some of this legislation without considering very seriously the backgrounds from which we are working and the sort of people (a) on whom it is going to be applied, and (b) who are going to apply it. We would urge the Government to reconsider this matter very seriously in the interests of what I consider to be of greater importance in the long run than these expedients of merely short advantage, and that is in the interests of durable harmony and confidence and respect as between the Government and the public and also between the various racial groups. We urge on the Government to reconsider this matter, probably to introduce some amendments to sections of this legislation in order, at least, to meet the fears which we have expressed. As my friend, the Member for the Southern Area has said, we find it very difficult to oppose any measure which is aimed at bringing to an end the State of Emergency because our people are very, very tired of the State of Emergency, and they want it to come to an end today if possible. At the same time we feel it would be a betrayal of their interests merely to support a measure because by so doing we buy the end of the Emergency, and in this particular case we are being asked to buy it at any price. The price that we are being asked to pay, in fact, is merely the transformation of the more important aspects of the State of Emergency into the permanent and substantive law of this country. A point which we have spoken about so much in the last few months that we would have felt the Government was going to do something before this Bill was actually brought to the House. We are very sorry to see that the Government did not heed our warnings, did not listen to our expressed concern in this matter. And may I conclude by saying that if laws are going to be any use at all they should appear in the eyes of the public to be just and fair. They should appear

in the eyes of the public to have been introduced not in the interests of the Government, but in the interests of the public. It is no use for the Government to tell us that Government is determined to preserve the peace and will therefore arm itself as it sees fit. How far will this Government go if all it is concerned with is what it wants to do and not the impression that it gives the public. If the public gain the impression that all the Government is interested in is to victimize them, is to punish them, is to curtail their rights, how far is the Government going to succeed in winning their confidence? I submit, Mr. Speaker, that whatever laws we may have on the statute book, however severe they may be, they will not—they will not—produce the atmosphere by themselves in which there is confidence and mutual respect as between the Government and the public. In the absence of confidence and respect I submit the Government will not succeed in its efforts.

MR. NYAGAH: Mr. Speaker, Sir, I know that the State of Emergency exists in the whole of Kenya, but it is in the Central Province where the effect is most felt, and where the effect has been felt most for the last seven or so years. Therefore, Sir, if anybody, or anything is done today or at any other time in the near future to delay the declaration of the Emergency's end a day or an hour longer, will be doing disservice to the people of the Central Province. Here, Sir, as a representative of the people who have felt it most, I find myself in the horns of a dilemma. There is the Emergency to be brought to an end, and there is the introduction of the smaller of the sledgehammer regulations. If I had my own way I would say that the two should go together, but if it is a matter of choice, then perhaps it may be necessary to choose the lighter hammer. Even then, Sir, although I know it is very necessary for any Government to make an Ordinance with the provision for preserving the public security, I know also it is equally necessary and good for any good Government to listen to the criticisms that are made on such laws and provisions.

Then, Sir, I would like to comment on some points which arise from the sections and subsections in this present Bill. Very good news, Sir, was made in

[Mr. Nyagah]

November by His Excellency the Governor in this House, and as I said during my speech on the Vagrancy Bill, the people in the Central Province, felt that the hope of a long period of trouble and difficulties was coming to an end; they will now find themselves slightly terrified with the way this new Bill will affect them. It was only yesterday, Sir, when I met some people on my way to Nairobi in my constituency who asked me what has happened to the ending of the Emergency, because they had hoped that 1st January, the public holiday, was going to bring the good news so long awaited for—the declaration of the end of the State of Emergency, to bring to an end such restrictions on the movement of the Kikuyu, Embu and Meru and also the communal labour. My answer was, "Tomorrow, ladies and gentlemen, will be the day to decide when this will come." Personally I would not like to delay the time when the time when the Government will pronounce or put into effect the last section of this Bill, section 8. That is the repealing of the Emergency Powers Ordinance. But Sir, I would like to point out to the Minister concerned that in my opinion section 2 is somewhat vague. He should have included everything that the Government thinks constitutes the interpretation of the public security. These are just a few. And it may be that those people to whom power for working out this Bill when passed into law may not have all the necessary points which constitute public insecurity or public security; because as this reads, the things enumerated in section 2 only "include," and that suggests to me that there are other things which ought to have been in and are not in.

Section 3, Sir, subsection 2 (b). To make provision for the prohibition, restriction and control of assemblies. If there is any effective restriction and control of assemblies, I do not see how the word "prohibition" should come in. The Government now is aware from the lessons of the past, and I do not think they could ever again be caught unaware. Therefore prohibiting meetings where certain people would express their ideas is unnecessary. I dare say it will be necessary to deal with offenders if the meetings are properly controlled, and if

they are properly restricted, but there should be freedom to hold meetings and therefore a "prohibition" should not be in the subsection.

Subsection 4, Sir. Again, in my opinion, I feel something ought to be added. There is a place in the wording of the section which says, "... and they shall continue in operation until the Governor by a further notice in the Gazette, ..." I feel, Sir, that something between "notice in the Gazette" should be added. It is very dangerous to leave it as it is. "Until the Governor" could be anything. Perhaps in 1952 when the regulations now governing us under the Emergency Ordinance were passed such vague phraseology might have been put—"until the Governor", but now we are in the eighth year of this period. Something that will give us an idea of a time factor or time limit or give us a hope of rapid and frequent examination of the conditions may help if at all this Bill were to be passed.

Subsection 2 of that section 4, I think, is unnecessary—particularly subsection (b) which requires persons to do work or render services. This the Central Province people will interpret as the continuation of the Emergency or the continuation of the so-called communal labour. I think the time is coming in this country when that kind of free compulsory labour of the kind we have had in these difficult seven years will come to an end, and this particular subsection 2 (b) is unnecessary.

Also subsection 2 (a)—the detention of persons, should have been more qualified by saying "with a trial as soon as possible" or giving the time for trial as it does in the Vagrancy Bill. Give the duration during which a person would be held in detention before being repatriated home or before being tried.

Subsection 5, Sir, raises something that will be a pity if it was to be passed and allowed to remain unchallenged. In his speech the Minister said that a form of control would still be necessary, particularly in the areas which have been most affected by the Emergency, where people are still living in villages. I do not know whether he really meant it or it was just an example that he gave of the Kikuyu native land unit, or whether he meant the whole area where the State of Emergency has been felt most, meaning

[Mr. Nyagah] the Central Province. If the Minister meant that people in the Kikuyu native land units only would still be controlled in the movement back to the farms, I would say that this Bill should be returned to the Council of State for further examination, because it is discriminatory in that nature.

Again, Sir, in the same section, I believe the Minister said that it was to enable the Government to deal with the terrorists. I do not know what definition of a terrorist we are to take. If we are to take a literal translation of a terrorist, it is a man that terrifies. What happens if a man is no longer terrifying an area or any people? What is a definition of a terrorist in this case? I would like to hear the Minister define what he really means by a terrorist, or what he meant by a terrorist in this clause.

Clause 7, is a very frightening clause. Many times before the African Elected Members have expressed fear and it has even been expressed here this afternoon in this very House. The interpretation of laws can sometimes become arbitrary. We know at this time it is not always easy to have efficient officers of all grades to interpret the law as it should be, and that is why we ask the Government that as long as we are in this kind of state where we do not have officers always efficient, all of them to interpret the law as it should be, the Government should be very careful to make it definite as to whom such authority is given.

Subsection 7 gives powers to "any other authority", or person in pursuance of this Ordinance to deal with this Ordinance, and any person who does not comply with whatever orders may be given, such orders shall be deemed to have been granted or issued by the Governor or that authority or the person. I find it very difficult, Sir, as I have said before to trust every—I shall be excused here to say—to trust every constable who may be required to apply this law, and I should question very much the belief of the ability that such a person issuing an order or regulation under this Ordinance would be doing it in the name of the Governor. I know it is necessary for someone to execute or to put the law across to the people and see it is maintained, but what I am asking is that there

should be a definite classification or appointment of people of a certain high rank to do with this. Just as in the same way we do not pick any police constable to deal with immigration matters, so I think this would be very important to have people of high integrity to work it.

Mr. Speaker, Sir, as I said before, I would not like to do anything that would delay the pronouncement of the end of the Emergency. The good news that we are waiting for, I would like to say in conclusion, Sir, and leave the House to make its own conclusion of my statement, that the continuation of the State of Emergency, which has been brought about by the so-called Governor's powers with a sledgehammer, are now giving birth to this Ordinance, to this Bill. If I had by my own way I would say that the two should go together, Sir, but if it is a matter of choice, in order to relieve and to bring relaxation to the people who have had seven years of a difficult time, I would perhaps choose the latter.

MR. NGOME: Mr. Speaker, I rise to support, to strongly support this Bill. My reason, Sir, is that statements have been given here asking whether this Bill is necessary. Well, I should say it is very necessary, Sir, because I know what is going on in the reserves and what is going on in the townships. There are, Sir, some flags all over the towns and countryside and it is only a month ago I was told by a reliable source that very soon the Administration will allow the flying of Union Jacks in every chief's *boma*, so that will be the answer of these bogus *Uhuru*—flags which are going all over the country, and I have been trying to find out where those *Uhuru* flags come from, but it is difficult, Mr. Speaker, to get an answer. Now, the suggestion has been made here that there is a delay to end the Emergency law in this country. Well my answer, Sir, is that we Africans are causing the delay of the Emergency law to be ended, because if we Africans come together, as I have repeatedly said, outside this House and in this House, that if we African leaders do come together, it is our duty to go together to see outside people and talk to them and say, "Now, look, we are here, now you should do this, you should not do that", and surely they will agree but the supporters of those people who go about

[Mr. Ngome] with these slogans flying and if and when we hold a meeting they are moving about, and when they hear a Member is travelling from one place to another, well those flags go forward, Mr. Speaker, and reading some of those flags they say, "Hail Colonial Rule" "Release Kenyatta" and some other writings. Mr. Speaker of that sort. If we allow such demonstrations to go on what do we expect the Government to do in this country? To run the country there must be law. No Government can rule the country without law. Now, I feel rather worried, Mr. Speaker, to hear sweet words in this House concerning the law for Africans—I am an African and I do not find any trouble with the law. When I know that meetings must be given permission by the district commissioner, well I go to the district commissioner and ask permission, and I get a licence and hold my meeting. I do not find any trouble attached to it. It is just like a man who buys a car, and is told to get a licence to drive it, he does not complain, he knows what to do and complies with the law and is free—he goes freely. Well, Mr. Speaker, I do not want to go on with a long story, but I repeated in this House sometime ago, that the Bible tells us that it took the Israelites 40 years to go from Egypt to Canaan instead of a few weeks to get there. Now we Africans, I say clearly and openly, are the cause of bringing these Emergency laws in this country, and we are the cause of delay, why the Emergency laws cannot be ended very soon. If we are together—I do not see why we African Members do not join together and say, "Now we will address the meeting together, we will come back to the Government together, and say as far as the country is concerned we want the Emergency law to be finished at once," and I think the Government will see the majority saying what they want and I am sure they will give us what we want. But if we are not together, well, I cannot support a Motion which says now the country is all right when the country is not right. We hold a meeting here, and we see people stoning one another, and they are not Indians or Europeans, they are Africans—Africans against Africans. Now if we see such trouble going on in the townships like that, what do we expect Government to do, I shall say something which my

people may not like, but they must have it. I travelled from Mombasa to Nairobi last month and I had heard, Mr. Speaker, of the gentleman in Tanganyika, Mr. Nyerere. Well, when I saw Mr. Nyerere at Mombasa Airport, he was introduced to me and other friends, and he came like a very good gentleman and shook hands with me and I asked him questions and he answered them and went away. Now some of the Members in this House, Mr. Speaker, Africans, if I say, "How are you?" they just turn their faces as if they do not like to see me. Now, is this co-operation? Now I was talking with a friend, a European friend, Mr. Speaker; English people say "Please do not compare a horse and a donkey." With regard to Tanganyika today it is like a horse and Kenya is like a donkey—it is the Africans we are referring to—and if we are not behaving like the people in Tanganyika we shall remain where we are for ever and that is what we must understand. What the Tanganyika people are doing, is not what Kenya people are doing, and if we want our country to change at once like Tanganyika, we must copy what the Tanganyika people are doing, otherwise we shall remain behind. I repeat what I said, we shall not compare as a horse and a donkey. If I say donkey, it is an African—a Kenya African—I am one myself, and we must be very careful if we want this country to come up quickly. Tanganyika is a young country, I have experience of Tanganyika, I have been there and I know the mentality of Africans in Tanganyika, and I know the mentality of Africans in Kenya. Kenya is suffering from cramp, talking too much, boasting and all that sort of thing, nothing achieved and people are happy going about that way. Mr. Speaker, I say I strongly support this Bill which is good for the interests of the country and custody of other people's property. I am not Mr. Stone of River Road, I am Mr. Ngome a Member of this House.

Mr. Speaker, I have nothing more to say, but I strongly support this Bill.

MR. MUIRO: Mr. Speaker, Sir, before I speak on this Bill, I must say that some of the remarks of the hon. Member who has just sat down here were uncalled for. To compare Kenya and Tanganyika and say that Kenya Africans are like donkeys and those in

[Mr. Muliro]

Tanganyika are like horses, I think is sheer lack of words that one can call for such phrases.

Now, the hon. Member might or might not be right in saying that the Africans are delaying the Emergency, I say he might be right or he might be wrong, but he also must bear in mind that whenever you have a problem, when you want to solve it, you must know the real causes which are under which will be needed before you can solve it properly. I will not go on very long with the hon. Member's speech, but I will go on to say what I want to say.

This Bill, although many of us were very critical about it, when the Governor first announced here that there was going to be a public security Bill and the sooner that this Bill passed through this House, the quicker we would see the end of this terrible State of Emergency. Therefore, anyone—any African—who gets up and says we do not want this, that is oppose it *in toto*, would be interpreted by many Africans that we do want the State of Emergency to continue. As long as the Government's stand regarding the end of the State of Emergency hinges on this Bill, I would say let it go through this House as quickly as possible, let us see an end to this seven years' misery in this country. But I would like to say that it is much better to prevent or try to remove the conditions which have created the misery, that led to violence and subsequently to the original State of Emergency decree. I think the Government would be wiser in future that the conditions of the past which brought about the State of Emergency are completely eradicated. These conditions, Mr. Speaker, are various frustrations, political, economic or social. Now, we in Kenya, who do not want this misery to be brought up again, should all work very earnestly to see that these frustrations are removed.

As for the necessity to have a Bill of this kind introduced into this House, one must say there might be the necessity or there might not be the necessity but, as all Governments, all must take precautions, in fact, even the national governments might require a Bill of this kind, because there is no government

anywhere in the world, whether it is a foreign government or a government of the people—I say a foreign government because the Kenya Government as at present constituted is directed from the Colonial Office and is, as such, a foreign government. Therefore, there is no government which would see lawlessness in the country. Probably this Public Security Bill, which we are now talking about might see its place in a free Kenya to guarantee the liberty of the citizens of that time and we must, with every confidence, Mr. Speaker, I feel what has happened in the past is never going to recur again in Kenya. If we genuinely work for building a society of free people, people who are free from fear, free from want, we shall never have this Bill, probably, either strengthened in this country or in this House or even the necessity of keeping it at all. We might in future repeal it, but, at the present moment, as I said before, we want to see the Emergency coming to an end, let the Government get through this Bill and see the end of this State of Emergency. I support the Bill.

MR. KIAMBA: Mr. Speaker, Sir, I must oppose this Bill, not because there is anything bad in the preservation of public security. I know that in the country we have sufficient law to punish every criminal who breaks it and I notice in sense of this Bill that there is weakness on the part of the Government, because here the Government is trying to say on one hand that they are going to end the Emergency regulations—end the State of Emergency in the Colony—and here, in this Bill, they say they only change the name and call it security preservation, while we know the ordinary law in the country can do the same kind of work. If the Government is not going to end the Emergency, it must say so. Instead of saying they are going to end the Emergency they will then continue calling it another name. I think any Government which fears that public security may be endangered by activities—of some communities—may make sure that the actions are stopped before they happen. We know that the Bill has got a good name, the Preservation of Public Security, for that matter I think the Ten Commandments are a good example of that public security, but we must know what kind of security we want to preserve, we must know what is

[Mr. Kiamba]

at stake if we are going to make regulations to control and prohibit Africans holding meetings, then that will not be the proper way to rule, because they always think that the law was for themselves only and not for the other people and if we can do without that then it will not be of use to have a Bill like this. I say again that the name—Preservation of Public Security, is a good one, nobody is against that, and it is only when it is connected with Emergency regulations that we find it more difficult if it means the same thing.

There is one part of this Bill and that is the last one, which states that it repeals the Emergency powers and regulations. I am quite in agreement with that, because I would like to see the end of Emergency regulations at any moment now.

Other Members have said that we would be putting other people in the Central Province in an awkward position if we oppose this Bill because they will think that we want Emergency regulations to continue in their area. All that we ask the Government now is to see that they consider this Bill again and put it in a good way so that Africans will think that it will help them most.

With these few remarks, Mr. Speaker, Sir, I wish to oppose the Bill.

MR. ARAP MOT: Mr. Speaker, Sir, many Members have registered their opposition to this Bill and I see the reason why they opposed it, not because they do not want public security preservation, but, personally, I find it difficult and I do think that the Government is contradicting itself in that this House has voted so many thousands of pounds—in fact, millions of pounds—for the police force in order to curb crime and protect persons and their property. Here the Government says that it cannot protect persons and their properties using the present substantive law, the laws of the country as they exist at the moment.

Mr. Speaker, Sir, I feel that it is very essential that we adopt a democratic frame of mind, not as a duty but as a habit of mind, as a pattern of behaviour. We want to create a nation and by creating a nation we should not perpetuate or create laws which tend to suppress certain sections of our com-

munity. I say this, Mr. Speaker, because in this Bill there is a section—I do not want to cite too many sections because I do not feel that this Bill is really necessary. In one section, Mr. Speaker, it says that there should be control over assembly. I find it difficult and would like to ask the Government why it is necessary, if in other parts where there is no violence and there has never been any violence at all.

When the Governor made his speech in this House every Member of our communities, particularly the African people who have suffered for the last seven years felt that the Emergency was going to be declared at an end and as the Member for Nyanza North has stressed, if the African Members oppose this Bill we do not want to create an impression that we oppose the declaration of the Emergency at an end but feel that there is no justification for this Bill.

Mr. Speaker, I do not see any sense for certain—most of the sections in this Bill—because the country as a whole is really quiet and there is tranquility. If Government has any doubt in any area, it should be dealt with by the ordinary police force or other provisions already in the substantive laws.

Also, Mr. Speaker, I find in clause 3, subsection 2, that the Government is going to make a provision to control food, liquor, medical supplies and some other things enumerated in this section. I should like the Minister to enumerate or interpret clearly what it means by all these sort of things here. Therefore, Mr. Speaker, I should like to say that the Government ought to say that there is no need for any laws which curb freedom of individuals in the country and we feel that at the moment the Emergency does not exist. At the moment people, particularly in the Central Province, want to seek employment and this Bill might endanger such people who look for work and the interpretation in this Bill might suggest that such persons might be called terrorists, people who are not intending to look for employment and Government should give serious thought over this question of unemployment as far as this Bill is concerned.

Mr. Speaker, I beg to oppose.

AIR COMMODORE HOWARD-WILLIAMS: Mr. Speaker, Sir, I rise to deplore the Motion before the House for the best possible reason, it is aimed at the freedom of the Press, the only safety valve left to us under the constitution.

I confine myself, Sir, and my opposition to paragraph 2 (a) and if you will allow me, Sir, I will read it: "The Governor may, for the preservation of public security by regulation (a) make provision for the prohibition of the publication and dissemination of matter prejudicial to public security." Some Members may laugh on the other side of their faces when I proceed. "And to the extent necessary for that purpose on the regulation and control of the production, publishing, sale, supply, distribution and possession of publications."

How else, Sir, can we challenge the Government as it proceeds down the hill it has thrown up by its patent weakness? How else? Can anyone tell me how else? I have had some considerable experience in this regard, Sir, and hope my arguments will be heard with concern by all Members of this House in the best interests of Kenya, which must not be allowed to wallow in the trough of a despotic dictatorship.

Nothing smells so powerful, Sir, as a fresh herring waded under one's nose some months after it has been trapped. I trust the Attorney-General enjoys the experience because it so happens that I have netted a shoal of fresh herrings every one smelling worse than its fellow. In fact, Sir, the hon. Minister for Education judged me correctly the other day when he accused me of, I think he called it, benign ferocity. That is, perchance, my role in this House, although at the moment only my claws should be visible.

I am in some difficulty, Sir, as many Members will be aware. I have myself owned a newspaper which was recently proscribed towards the end of the Emergency under circumstances which led me to bring a case against the Government, a case which went against me. I have, of course, accepted the verdict of the Judge but I have applied for leave to refer the issues to the East African Court of Appeal. I wish, therefore, to make it quite clear at the outset

of what I have to say on this Bill and paragraph 2 (a), that I am only speaking on principles and confining myself to that aspect of the Bill and that my own case is something quite apart, at the moment, from the general aspect.

I say without question that in this Bill the betrayal of the freedom of the Press is both vile and evil and the most dastardly crime the Attorney-General has yet perpetrated make well, in the name of democracy.

Nor is it, Sir, in the best interests of honest men who have, these days, only to open their mouths and tell the truth about the Government to be suppressed, become the subject of privilege, and to be disposed of if need be.

Mr. Speaker, the only constitutional way open to the members of the public of all races is to air their views in letters and in articles to the Press—to a free Press—and, of course, in this Council, if they reach it. Deny them that, and you will wreck any Constitution, even this present dictatorship and lead them straight into the arms of the Communists, or even chaos on which, of course, communism feeds. What have we now? Certainly there is no Right Wing Press in this Colony. That is not tolerated. We have a highly nervous Press who will probably be too terrified to print what I am saying at this moment. Unfortunately, Sir, I have not got my paper or it would be printed! A Press which is controlled by the Government. A Press, however, that includes at least one newspaper that has been forced to succumb to a form of whitewash.

Here, in this Bill the Government are giving the Governor and/or his advisers extreme powers when he is satisfied that the publication of matter is or is not prejudicial to public security. Surely, such powers would better be used by the Secretary of State, and even then only when they are absolutely necessary. If such powers are too easily granted, they can lead to the abuse and intimidation of the Press, which is after all inimicable to the British Constitution who allow the Press a wide licence at home in what they publish in that it is, apart from the House, of course, almost the only avenue left for Government to be reminded of its sins of omission and commission.

[Air Commodore Howard-Williams] Quoting from the *East African Standard* the other day the hon. Member for Legal Affairs said this: "Any objective observer would agree that Ghana was a civilized State." Whatsoever Ghana might be, Sir, nobody in his simple senses could accept that without question. I happen to be an objective observer to start with, and cannot agree with that observation. Not merely do they proscribe the Press, but they put the Opposition in jail so that their leader was forced to bolt to England. The Attorney-General went on: "Attacks of this nature" he was referring to Ghana—"can cause considerable offence to Europeans and Africans in Kenya. Criticisms of South Africa would not be looked upon in the same light by Government." What a confession, Sir, by a Minister of the Crown about a member of the Commonwealth of Nations. Whatsoever: South African policies may be, and I emphasize that I do not altogether agree with everything that they do—surely, he went too far there. See where proscription and oppression and privilege can get you. No one deserves the censure of his own people than does he who betrays what they stand for. Quillings I call them all.

What future lies, Sir, for anyone in this Colony these days consequent upon the suppression of the Press? The civil servant is doomed. He and his career are about to be betrayed even as much as is the settler and the merchant, together with those hundreds and thousands of loyal Africans who serve them. Instance India and Burma, the Sudan and Egypt, Iraq and Malta, Ghana and Nigeria, Cyprus and Ceylon where some 80 per cent of our civil servants were replaced by those of other races; some of them from behind the Iron Curtain. In those places, Sir, corruption is so rife that it is even worse than it is here. Assassination is the supreme form of censorship. Justice no longer reigns. The Opposition is in jail. Civilization—my foot! Shame on our home country, say I! At times I thank the heavens that I am a Cornishman and not British.

The Council might further care to ask itself—thanks to the suppression of the Press—where is the Government leading us? Why should Col. Young resign? I happen to know the answer. Why did

General Ballantine resign? I happen to know the answer. Why did Mr. Gavaghan of Kiambu resign? I also happen to know the answer. Why did "Taxi" Lewis and Sullivan resign? Not only do I happen to know the answer to that, Sir, but so does the whole wide world including every Member of the House of Commons on both sides, including the Home Government, including this Government and every single one of us. Government could not keep that out of the Press although they did their best. Sir, the Government is alone to blame for all this. They have adopted wrong policies; they have left us no paper in which to bring these matters to notice. As a result I heard tell the other day of a very senior Colonial Office official who advised a friend of mine "Not to put your daughter on the stage, Mrs. Worthington—for "on the stage" read "in the Colonial Service" which is what he actually said. These fine up and coming young men are doomed by the Colonial Office itself who will thus one day throw over their best friends as soon as look at them.

I am now going to let you into a secret. Sir, I had no political ambition whatsoever when I came to this Colony. I sought only to end by days peacefully. I felt I had earned a rest after literally a life time spent at war. Ten years of major wars, controlled by fools and ten years of minor wars controlled by maniacs. Notwithstanding, Sir, by the merest accident I have found myself projected by fate to defend the freedom of the Press.

I am coming to the end of what I have to say, Sir, and I am speaking to the honest men in Kenya of whom there are many, including in high places, Sir—in official circles particularly, in commercial circles abundantly and in family circles completely because that is their nature. We are all of us ashamed of what is being done in our name because none of it need be.

In conclusion, Mr. Speaker, I beg that something be done to restore public confidence with the freedom of the Press which alone deters the guilty men who throng the halls of hell—and like it

I oppose this motion as it stands, Sir, as an honest man, and I beg the support of my peers.

DR. KIANO: Mr. Speaker, Sir, I do not want to detain the Council too long on this Bill because opposition to it has been made very clear by my colleagues on this side of the Council.

Sir, I am particularly struck by section 4 of the Preservation of Public Safety Bill which says that: "If the Government or the Governor is satisfied that the situation in the Colony is so grave that the exercise of powers granted by this Ordinance is inadequate . . ." etc., etc.—this in itself is an indication that this Government is likely to be so inefficient as to dissatisfy the people so much that they would allow the situation to be as grave as it has been in the past. I think, Sir, that a more positive attitude would have been for this Government to determine that people in the Colony are so satisfied by its performance that there is not so much misunderstanding between the people that there will not be a situation sufficiently grave to necessitate another Emergency.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) left the Chair]

[Mr. Deputy Speaker (Mr. Bechgard) took the Chair]

We are again told, Sir, that "the Governor may make provisions for the prohibition of the dissemination of matter prejudicial to the public security . . ." etc., etc. I am reminded, Mr. Deputy Speaker, of an application that I made some time last year for a licence to own a printing press. The answer was that I would not be given a licence because it appeared to the Registrar-General that I was likely to print material prejudicial to peace and good order.

Now, Sir, here was a situation where the Government was using powers to prohibit a person from printing before he had even printed to show whether he could print material that was prejudicial to peace and good order or not. This kind of Bill—if put into effect—will give the Government a repetition of this kind of thing. Perhaps I should make it clear to the Council that after a year the Government finally decided that perhaps I was safe enough to be allowed to print material that was not prejudicial to peace and good order, although I saw

no change at all in either my person or in my philosophy towards this Government.

Here the Government has another opportunity to penalize people for actions which they are expected to perform before they have shown any indications whatsoever that if they performed them they would be prejudicial to peace and good order.

Now, Sir, any Government—democratic or otherwise—has a duty to maintain law and order, and if the Kenya Government considers that without this Bill they cannot maintain law and order then I wonder, Sir, if they have forgotten their Governmental duty. Governments always have powers to deal with situations of the Emergency type whether or not they have a Bill of this kind.

Now, what is important is that in an earlier debate, it was alleged that substantially this Bill is an attempt on the part of the Government to retain part of the Emergency Regulations which they now feel are necessary before the Emergency can be declared over. If I remember correctly, the Chief Secretary was very heated in his argument against that kind of allegation—that they are trying to retain some of the Emergency legislation in Kenya before they declare the Emergency over. Sir, I call upon him, or the Attorney-General really to convince the Council that this is not directly borrowed from what we have been having during the last seven years. To me, this seems to be a direct borrowing of the Emergency administration and the experiences gained there, and to tell us that the Emergency is over and yet retain in our law books something of this kind makes me feel that they are deceiving the public that they have ended the Emergency.

We, particularly the Africans who have been in public life for the last two or three years are very aware of what these kind of regulations can mean to an individual. They can mean that Elected Members may not be able to address their people in their own Constituency. It can mean that if you are considered a "bad chap"—to use an expression of the powers that be—you may not publish your views even if you have declared publicly that you are opposed to violence and subversion.

[Dr. Kiano]

They can also mean that a person who uses strong language against the Administration could actually reach the point of being detained. Sir, in other words, what this Bill does is to take the British concept of justice right through the window and put in its place a Kenya formulated type of justice which has no applicability or honour or respect anywhere else except in the minds of men who live in fear or under fear and who always consider some people in this country as having a natural propensity for creating emergencies and causing violence.

Sir, I think that the best way to preserve public safety is for the Government to positively find out what makes people discontented and to try to meet the demands of those people. If people are satisfied with the performance of their Government, then those people will be good citizens. If, however, they are continually dissatisfied with their Government—with or without the Preservation of the Public Safety Bill, then that Government will experience difficulties with its subjects.

Now, Sir, very soon we shall be going to Britain to try to reconstruct the nature of the Government of this country. I wonder, Sir, what is the purpose of going if we first of all tie ourselves to this kind of law which, in my humble submission, will not have any place at all in any democratic Government that may emerge from the talks in London. I think it would have been much wiser to have left this kind of thing out so that we could go to London with the hope that we can create in this country a type of Government which will command so much confidence amongst the public and majority of the country that there will be no fear of any repetition of the kind of thing that happened in Kenya some six or seven years ago.

Now, Sir, my last point is this. When His Excellency the Governor was speaking he said that the people of Kenya should look forward to a new day. But what this Bill has done already—even before it has been passed—just the mention of it, and I think it was mentioned during His Excellency's speech in November, has completely undermined the people's confidence in the goodwill of the Kenya Government. People are

saying that we have a Government which has tried to make us happy by telling us that they are ending the Emergency, then through the back door they apparently dash that happiness so that people no longer have any confidence in the goodwill and the good motivations that are supposed to be behind this Bill.

I therefore think, Sir, that it would be much wiser—and any hon. Member who finds that he has made a mistake should never be afraid to withdraw—and I think it is not too late to ask the Kenya Government to reconsider the points that have been raised in this Council and to go back and tell the Council—without saying that they fully agree with all the points raised by the Opposition—to reconsider again whether or not this Bill does more harm than good to the people of the country as far as the relationship between the Government and the people is concerned. It is my submission, Mr. Deputy Speaker, that this Bill actually does harm and does very little good.

There are no doubt people who will say that the mere presence of this Bill will give confidence to some people. They are the people who are so afraid of Kenya that they would like to see the Government put in their law books this type of law in order that they may be told either privately or publicly: "Look here, fellows, there is no need to be afraid, we have now got a hammer in our hands and if there is any trouble we have the hammer ready to hit the trouble makers on the head." Now, Sir, I consider this kind of Bill to be a kind of sledgehammer to make some people safe and to give a sense of security to others who are already living in fear in this country. But, Sir, I can only say that it is not by holding a hammer over the heads of the people that you will make them quiet and peaceful. It is not by holding a hammer over some people that you will make other people feel any safer or any happier because so long as you have the necessity in a country to have a law such as this, then there is something wrong with the Government of that country. If it is necessary to pass a law like this in Kenya, then there is something—that the Government of Kenya has done to make the people dissatisfied and therefore against the Government and likely to be subversive.

[Dr. Kioko]

It is my submission, therefore, that if the Government is aware of any situation or condition that could bring about the recurrence of the Emergency, then that Government's first duty is not to hold a hammer over the heads of the people, but to find out how they can eliminate those conditions so that we will not have a recurrence of the Emergency.

I am therefore accusing the Government of taking a very negative attitude and using a sledgehammer instead of examining itself and finding out why it thinks that it is so unpopular that subversion against it is likely to occur.

I feel, Sir, that we can promise the people of this Council and of the country as a whole that we intend to give them such leadership that subversion will not occur—or recur—and that we are also determined to see that when the Constitutional issues are settled we shall embark on a period of prosperity and if the Government will join us in that and reform the Government institutions we have today and after that be determined with us to give to the peoples of this country not only the freedom which they deserve, but also development of the social services, then I think we will all be doing Kenya much more good than creating suspicion and fear through a law of this nature.

Therefore, Sir, I feel that it is only right and proper for the Chief Secretary and the Council of Ministers and His Excellency the Governor to withdraw this Motion and instead face Kenya bravely and positively and find methods designed to satisfy the public of this country instead of continuing the Emergency—because the effect of this Bill will be to continue the State of Emergency in this country and I think everybody deploras any measure that that would put Kenya back to the Emergency administration.

I entirely oppose the Motion, Sir.

MR. SLADE: Mr. Deputy Speaker, Sir, unlike other hon. Members who have spoken from this side of the Council, I fully support this Bill, and I know that in doing so I speak for a considerable number of other hon. Members on this side who have not spoken and may indeed not feel it necessary to speak

Indeed, Mr. Deputy Speaker, we could not do otherwise because we have on many occasions during the last year or two asked the Government for an assurance that in the event of the Emergency being brought to an end—or rather the State of Emergency declared ended—there should be sufficient legislation in our substantive law to ensure that any residuary measures of Emergency legislation that were still required would be available. I can remember, Sir, a question asked by the hon. Member for Mount Kenya, a question which had the support of very many of us, to that very effect, and an assurance was given by the Government that that would be so, that there would be no declaration of the end of the State of Emergency until we had on our Statute Book sufficient powers to cover what still had to be covered as a legacy of the Emergency. Well, Sir, that assurance was given by the Government and the Government is now honouring its promise. But, Mr. Deputy Speaker, at the risk of repetition of what has been said in this Council before, we must get absolutely clear in our minds what this means. What is the point and the background of legislation of this kind? Several hon. Members have pointed out how objectionable it is to have in your law power to interfere by executive action with the liberty of the Press, the liberty of the subject, with those other liberties which we regard as the birth-right of civilized liberal communities. Now, there is no argument as to that at all. None of us could tolerate in our substantive laws, as applied to all of us from day to day any such capacity for the Government of its own initiative to interfere with those liberties. That is not the purpose of this law. This law recognizes something which every country recognizes, however liberal, however democratic, and that is that when you have freedom in a country, and when you have substantive laws that preserve that freedom, sometimes

the freedom is abused, and then it must be open to the Government to declare a State of Emergency, and to say that, so long as this abuse continues, we have got to take unto ourselves exceptional executive powers which we will relinquish as soon as the community have shown themselves fit to live again

[Mr. Slade] under our substantive law of freedom. That is why, Mr. Deputy Speaker, we had to have a State of Emergency declared in this country in 1952, and that is why we have to have legislation of this kind now.

The purpose of this law is very clear. It is not to incorporate in our substantive law, as a feature of every day and for all time, the executive powers of Government to interfere with our liberties, but it is to enable the Governor, if there are signs of abuse of the freedoms which we seek to preserve, to take some special executive action for a short period. Now, indeed we have not got to have this law; we could rest on the powers of the Governor, when things go wrong to declare a State of Emergency, and have a repetition of the last seven years. Do we really want that if it can be avoided? Is it not desirable to enable the Governor to take rather less drastic action in time? What is the purpose of this legislation? To enable the Governor, if he sees a state of emergency looming up, to take action in time to avert it by certain restricted measures far narrower than those that he would have in a full State of Emergency. The law which we are considering today is a law which enables the Governor to take action for limited periods in case of need, and it is in that light that it must be regarded as a measure to preserve public security by special action when the need arises.

But that being so I have one criticism to make of this Bill. I do not think the wording of clause 3 or clause 4 makes that intention clear enough. It is a very serious matter, Sir, when the Governor sees fit to take unto himself any of these powers of interfering with our liberties and before he does so he must be prepared to declare publicly that a certain state of affairs has arisen. When you have a State of Emergency, such is the case. The Governor has to declare that there is a State of Emergency before he can assume these special powers. What we contemplate now is a state less severe than a State of Emergency, but still a state of affairs in which the substantive law is no longer adequate by itself to preserve public security, and it is essential that before

the Governor assumes any special powers he openly acknowledges, that fact, however distasteful it may be to him that things have got beyond the reach of our basic substantive law. Now, clause 3, as it stands, does not require that of the Governor. All it says is: "If at any time the Governor is satisfied that it is necessary for the preservation of public security so to do, he may, by notice in the Gazette . . ." and so on. I do urge that this clause must provide that if the Governor declares by notice in the Gazette that the situation is too bad for control by our substantive law, then he may take these powers. Possibly the wording of clause 4 is adequate in so far as that clause refers to a more serious state of affairs. "4 (1) If at any time the Governor is satisfied that the situation in the Colony is so grave that the exercise of the powers conferred by section 3 of this Ordinance is inadequate . . ." then he may assume certain further powers. But again, Sir, I think that we must require, by this Ordinance, the Governor to state in his notice in the Gazette that the situation has become too grave to be covered by the powers conferred by clause 3 alone. Then we have it quite clearly in the law, Sir, that the Governor can only assume these special powers if he is prepared to declare publicly a certain state of affairs which justifies the assumption of those powers. It makes it clear that it is a special state of affairs only which will allow him to go beyond the provision of our substantive law.

There is one other question that I have on the wording of the Bill itself, and that is with regard to clause 3 (2) (c). It describes various measures that the Governor may take, and it is a general paragraph saying that he may "make provision for and authorize the doing of such other things as appear to him to be strictly required by the exigencies of the situation in the Colony". Sir, from what I know of the construction of statutes of this kind, that paragraph is likely to be construed very narrowly, and I am wondering whether the Government is not relying too much on that paragraph to allow for very important provisions for which there is no express allowance in the clause. For instance, in the draft Regulations that

[Mr. Slade] are before us, I see in Part V a proposal that persons found in circumstances which raise a presumption of intention to act as a terrorist shall be guilty of an offence and liable to a term of imprisonment not exceeding 10 years. I am quite sure that some regulation of that kind will be necessary until we have cleaned up the remnants of this Emergency; but I would question, for the further consideration of Government whether power to make such a regulation is really conferred by paragraph (e) of clause 3 (2), because it is certainly not conferred by any other paragraph, and I would suggest that clause 3 should be elaborated a little further.

This Bill, as I have said, enables the Governor to assume certain powers if he sees a situation justifies it, and the Bill provides that he must first publish a notice in the Gazette applying the clause in question under which he proposes to act; and we are told again in the Memorandum of Objects and Reasons that clause 3 deals with the first stage and clause 4 with the second stage, and each requires notice by the Governor in the Gazette in order to make available regulation-making powers thereunder. But in moving the Second Reading the hon. Mover did not, so far as I heard him, tell us whether it is the intention of the Governor to publish Gazette notices applying clauses 3 and 4, or only clause 3, and when, because these Draft Regulations which he has laid today cannot operate until some such Gazette notice has been published, and I should like to ask for confirmation that, in fact, it is the intention, as soon as this Bill becomes law, that Gazette notices will be published applying both clauses 3 and 4, so long as it is necessary to clear up the remaining troubles of the Emergency.

It has been argued, Sir, that there is no need for this legislation. I have tried to explain in general terms why I think there is need for it, but I think at least one hon. Member on this side helped me to show the need. The hon. Member for Central Nyanza discussed the definition of "public security" in clause 2 and referred to that part of it which covers the prevention and suppression of mutiny, rebellion and concerted defiance of and disobedience to the law

and lawful authority. His argument, as I understood it, was that there is no lawful authority other than the voice of the people. If, therefore, a law is made by this Council which is not supported by what he calls the voice of the people then it is no proper law and the people have every right to indulge in mutiny, rebellion and concerted defiance; and that it is quite wrong and unnecessary to make a law which would enable you to suppress those activities. If that is the attitude, even of hon. Members of this Council, with regard to laws this Council makes, then how obvious it is that we do need this legislation today to control people who have such a point of view. It is quite astonishing to me, Sir, that anyone can be a Member of this Council and yet say on the floor of this House that laws made by this Council, because he disagrees with them individually, should be flouted by mutiny and rebellion. With such mentality abroad we shall need legislation of this kind perhaps for a regrettably long time. That also answers the same hon. Member's objection to some of these Draft Regulations. He asked why he should be restricted in addressing meetings. He could not understand why it should be necessary to obtain the authority of anyone to address any meeting. If hon. Members of this Council or anyone else declares a point of view such as I have just described and is prepared to go and preach that point of view to meetings all over the country, that it is right and proper for the public to defy by mutiny and rebellion any laws that they do not like, then does he really not understand why this Council wishes Government to have power to stop that sort of thing? If he does not understand, then there will be no understanding of anything.

It is said, Sir, that by passing this Bill into law we shall acknowledge that the Emergency is not over. Indeed, Sir, by passing this Bill into law we acknowledge no state of affairs whatever; but the Gazette notices to which I have referred, and which I can anticipate Government will assure us are to be issued, declaring the clauses 3 and 4 of this law are to apply for the time being, will most certainly be an acknowledgement that the Emergency is not entirely over. I would like to know who can seriously pretend that it is. Who can really pretend that there are no terrorists left

[Mr. Slade] abroad, that there is no intimidation, that there is no threat of riot, after the events which happened three or four weeks ago. Let those who complain that the Emergency is not over, and blame the Government for that fact if it be so, consider where the responsibility really lies. I suggest it lies in the minds of those who believe that, because they do not like a particular form of discipline, they have the right to resort to violence and intimidation. That, practically, is what has been put forward in this Council today; it has been suggested that the way to prevent the state of emergency arising again is to make everybody happy by just doing what they want. Anyone who thinks will know that to be impossible, because what one man wants another does not. It is the same old argument of, "What is the meaning of Freedom?" As long as people think that they can register their disapproval of authoritative action by utter disorder, then so long will states of emergency continue; and those who really want to see our country free of such troubles, and those who have the power to do so had better start putting into the minds of the people they lead that it rests with them how soon they can be quit of a state of emergency, or anything resembling a state of emergency.

I beg to support, Sir.

MR. NAZARETH: Mr. Deputy Speaker, I had not intended to take part in this debate until I heard the speech of the hon. and learned Specially Elected Member who has just spoken. I had made clear my support for this Bill in the debate that took place on the speech that His Excellency made in opening this Session of the Council. The reason why I supported the Bill on that occasion was that it is in the nature of taking reserve powers to be used if a minor or major emergency occurs necessitating the Governor taking those powers. The hon. Specially Elected Member who has just spoken has suggested that this Bill could be used to clear up the aftermath of the Emergency. If I thought that that was the intention of this Bill then I should be opposing it, because I have said in the past that it was time that the Emergency was brought to an end.

The object of this Bill, as I see it, is to bring that Emergency to an end and

to prepare for any new emergency, minor or major, that may arise, by vesting in the Governor powers which he can invoke by publishing in the Gazette the necessary notice declaring that he is satisfied if he wants to bring section 3 into operation that it is necessary for the preservation of public security to bring the powers contained in section 3 into operation and that he is satisfied that if a major emergency occurs to bring the powers under section 4 into operation. But I do not see that this Bill entitles the Governor, if there is no new emergency that occurs either minor or major, to invoke and to vest himself with these powers. I hope that when the hon. Mover comes to reply he will make it perfectly clear that it is not the intention of the Government to use this Bill to continue the exercise of some of the Emergency powers with which the Government is now vested. I hope that will be made perfectly clear, because, as I see it, that is certainly not the intention of the Bill. It is only when an emergency arises that the Governor can take these powers. I feel myself that the hon. Member who has just spoken has in fact, if what he said was true, justified the opposition of the hon. African Elected Members who have spoken. I do not see actually myself any justification for their opposition, because this Bill is in the nature of a blank cheque which needs to be signed or countersigned and it is only when it is signed or countersigned that it becomes in effect the law of the land, but it requires a specific act on the part of the Governor, a grave act of declaration of judgment, before those powers become operative. I hope that this misunderstanding will be cleared because otherwise if the Government were to allow any impression to gain ground that it is intended to continue the Emergency indirectly then I think a most unfortunate situation would result.

The Bill which is intended to clear up the aftermath of the Emergency is the Detained and Restricted Persons Bill which will be debated next on the Order Paper. The present Bill is intended to achieve a completely different object, which is to deal with any new emergency situation which may arise.

Therefore, with that reading of the Bill, I give my support to it.

THE ASSISTANT MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Waweru): Hon. Deputy Speaker, Sir, I listened to the debate very carefully and having been a member of the Kikuyu tribe I listened more carefully. Sir, to the opposition which had been aired by some Members of the opposite side of the House. Grouping those hon. Members who have opposed the Bill together, I think that the conclusion I came to is the right one, that they are thinking that the members of the Kikuyu/Embu/Meru tribes have not suffered long enough. And they wanted us to suffer a little longer.

The hon. Member for Nairobi North, Sir, having found fit to oppose the Bill while he himself has not at all experienced directly any of the Emergency regulations but may be he was executing, I thought that he was opposing the Bill for some personal grudges he has had with the Government. If I am wrong there, I would say that he has found fit to oppose the Bill for no other reason but opposing a Government Motion.

Some hon. African Members have found it fit to oppose the Bill while in their previous speeches in the House and outside the House they have been demanding that the Emergency should be declared off as soon as possible. When the Government takes those necessary steps to bring the Emergency to a close, the steps taken by the Government are opposed. Here, Sir, I am left with nothing but a completely confused mind.

MR. MBOYA: I thank the hon. Member for giving way. On a point of explanation, we have never suggested that we are opposing the declaration of an end to the State of Emergency. I have not said so, at least.

THE ASSISTANT MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Waweru): I have not, Sir, mentioned the hon. Member for Nairobi Area. For some unknown reason to me he suspected that I was speaking against him and I leave it to him, Sir, to come to his own conclusions. I think, Sir, that anyone who opposes this Bill is a real enemy of the members of the Kikuyu, Embu and Meru tribes.

MR. MBOYA: Question!

THE ASSISTANT MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Waweru):

All that I can tell the hon. Member when he questions this is for him to question himself and get the answer for himself. I think, Sir, I am right when I say that today was a day which most of the Kikuyu, Embu and Meru tribes had been looking forward to as a day when the Emergency will be declared officially at an end. In fact, I was asked this question by some members of my own tribe in my own district, where I stopped as I was coming, and in Nairobi. I would say, Sir, that if any person is not suspicious of himself, he would equally support strongly as I do this Bill and let it go through as soon as possible.

With these few words, Mr. Deputy Speaker, I support the Motion.

MR. HASSAN: I have heard some very good speeches today, Sir,—a thundering speech from my back and some very remarkable speeches from my left. And I can say that none of them said that they are not in favour of the removal of the Emergency from this country. They are all in favour of it. Neither would I believe that—as my friend, the Nominated Member just now said—the African Members who have opposed need the services of a mental specialist. Equally I would never believe that the Government has brought this Bill just as a dictatorial Bill. I feel, Sir, that the Government has very serious responsibility for the law and order in this country. I know very well when the Emergency was declared in 1952 the Government with an overwhelming majority was called upon to declare a State of Emergency. They did so, but up to this day the Government has always been blamed for the *Mau Mau* that appeared in Kenya for not taking action in time to prevent the lawlessness and now the Government is introducing this Bill—unfortunately with a lot of unnecessary details in it—by allowing powers for the Governor to declare almost a State of Emergency at a moment's notice. On one matter I felt very pleased when His Excellency gave his address in this Council—he said that although Bills would be introduced empowering him to declare almost Emergency powers to stop lawlessness he should, however, not introduce it unless he found it was absolutely essential. Now, in this case, Sir, as the Government machinery stands, it is quite clear

[Mr. Hassan] that the Governor can only find that such a state of affairs exists through his official machinery.

[Mr. Deputy Speaker (Mr. Bechgaard) left the Chair]

[Mr. Speaker (Sir Ferdinand Cavenish-Bentinck) took the Chair]

Africans at the present moment are not officials or unofficials at high level who gain the confidence of the Africans and when the Minister replies I would like to know if it is the intention of the Government that when such Bills are considered necessary to introduce, whether His Excellency the Governor will consult the African community at the higher level. The African Members have opposed it today because like immigrant races they have also suffered very serious losses during the Emergency. And because they were an overwhelming majority over other races, naturally they were suffering more and they were feeling more the facts of the restrictions which were imposed upon them, especially the Legislative Council Members who have been suffering a great deal of restrictions in meetings and movements and find that though the restrictions of movement mentioned in this Bill could be introduced by His Excellency the Governor and probably they will not be able to have any meeting or be able to have any movements without permits.

Naturally they feel that after the State of Emergency is ended, liberty and freedom in meeting will not be accorded to them, and if His Excellency before introducing any restriction in their movement was to consult the African at a higher level, that ought to satisfy the Africans considerably. There is no doubt when His Excellency gave his speech here that the Emergency would be removed there was controversy in the Press and in that controversy it was given out—that now that the Emergency is going to be moved we are going to have nothing but lawlessness in this country, and the Government, if it does not replace it with certain restrictive Bills in Legislative Council, is liable to bring about *Mau Mau* again. And those things have not been forgotten by the political leaders of the African community and there is no doubt, Sir,

that at the present time the present situation is such that the Government have got to be very careful when they are taking responsibility for keeping law and order in this country because if there is any lawlessness in this country they shall not have any unofficial sharing their responsibility. So far as my African friends are concerned, they must have noticed themselves that there is a tendency for the crowds to get very fond of mob law. They do start shouting, "Uhuru", which is a very pleasant word—we all like it, there is nothing wrong with it—but when that "Uhuru" is strengthened by throwing stones at all those who do not agree with them or with their views, it is one of the matters which I believe Government is taking very serious notice of and the public has also taken very serious notice of it. And I hope my African friends will try to tell their friends and their people whenever they have meetings that in the democratic world when you want a democracy you have got to put up with it even when something is done which you do not like and you have got to swallow it even if it may be against your interests instead of getting together in crowds and starting throwing stones. That creates a great deal of disturbance in the minds of the law-abiding citizens of this country.

With these few words, Sir, I have great pleasure in supporting this Bill.

MR. HARRISON: Mr. Speaker, it is said "once bitten, twice shy." Sir, in my opinion this Bill is an insurance against the recurrence of what was occurring during the Emergency. Mr. Speaker, it has my full support.

MR. BOMPAS: Mr. Speaker, Sir, I will take almost as long as the last hon. Member whom I congratulate on his brevity. Sir, I have risen only to get the record correct. The hon. Specially Elected Member, Mr. Waweru, did refer to the hon. Member for Kiambu as having opposed this Motion and as having made certain comments. In effect, I think that he was referring to the hon. Member, Dr. Kiambu, whom I believe is the Member for Central Province South. I am sure that the hon. Specially Elected Member would confirm that that was his intention, that he was not referring to me, Sir. I do not oppose this Bill, I do not think Government requires any

[Mr. Bonipas]

assistance in justifying the introduction of this legislation and I would like to declare my full support.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, Sir, the hon. Member for Central Rift during his speech said that the Africans suffered most during the Emergency, and they do not want another Emergency. I would like to ask him how the last one started and I would like to remind some hon. Members of part of the history of what eventually became *Mau Mau* and eventually necessitated the Government declaring an Emergency in 1952. It started—or the *Mau Mau* movement started—during the years from 1945 onwards by a persistent dripping of poison into the ears of the people who are members of the Kikuyu and Embu and Meru tribes. This was done both overtly and clandestinely, by secret meetings at night, and it was done by a group of people who themselves were apparently determined to subvert the Government. I hope, Sir, that when the History and Origins of *Mau Mau* Report which the Government now has—and I hope it will be published in the next few weeks—is available to Members of this House they will be able to see that the origins and growth of *Mau Mau* were due largely to deliberate steps taken in the way in which I have suggested to this House. The results of these steps were an out and out intimidation of a complete tribe. That tribe was so intimidated that witnesses and people were unwilling to come before the courts with the result that law and order broke down completely. And this seems to me to be the answer to those people who stood up in this House this afternoon and said that the Government has already enough power to deal with any situation. Yes, Mr. Speaker, I agree with him. The Government has enough powers to deal with any normal situation. But when the situation becomes abnormal in the way in which I have mentioned, I suggest to this House that the Government has not got these powers.

The same hon. Member said he believed that His Excellency the Governor promised the lifting of the Emergency powers. Indeed he did, Sir, but he also went on to prophesy exactly and in simple words what parts of the Emer-

gency regulation it was proposed by the Government to continue. I would, with your permission, Sir, like to quote exactly what the Governor did say. He said, "I am satisfied it is not yet possible compatibly with the interests of security to abandon completely the present controls under Emergency legislation of political organizations and of public meetings." He therefore gave clear warning that these, at least, would be two matters which would be continued in the regulations which are going to be provided under this Bill. He also said, "the present controls under Emergency legislation of political organizations of public meetings, it is my intention to make regulations under the Preservation of Public Security Bill on its coming into force to provide for the continuance of these two controls. For the time being in such form as I may then consider to be still essential, I shall be guided not by race or politics, but solely by my judgment of the needs of law and order. I hope that the experience will show me that I do not need to use these controls. I intend in the coming weeks to give sufficient rope to judge for myself how much, if at all, they must be used." He therefore did two things. He told us which were the regulations he proposed to continue, and he also said that if it was necessary he would not himself use them.

Now the hon. Member for Central Nyanza attacked the question of Government's control of public meetings. I have said earlier, and I tried to indicate earlier, that one of the reasons why there was the beginning of *Mau Mau* was because largely of freedom of speech, both overtly, and as I said clandestinely. Our record, as a Government, is this. That from 1958 and 1959, that is up to 30th September, 1959, African parties and associations were granted 322 meetings, Members of Legislative Council were granted 767 meetings—a total of 1,089 meetings: 767 of these were licensed to Members of Legislative Council up to 30th September, 1959. Meetings attended by Members of Legislative Council outside their constituencies and this was the point that was raised by the hon. Member for Central Nyanza, were 50 up to the end of November, 1959. These figures, Sir, I think show that the Government has not really been illiberal in

[The Chief Secretary]

its use of the control of public meetings which it has had within the Emergency structure. And furthermore, you have the Governor's assurance that he, himself, wishes to examine the situation and will decide how much further he will go in the control of these meetings.

There has been a great play amongst a number of people that the people have learned by their mistakes, and therefore it is no longer necessary to introduce further legislation. Government, at least, has learned one mistake, and that is of not having sufficient powers to deal with a particular situation. In the situation as I remember it at the end of the War people were not, I think, in such a state of fear and want, which is an expression which has been used by people in this House this afternoon, that they were ready to indulge in mutiny and rebellion. I may say that as a result of the War, as a result of the numbers of people that were away in the Army, a great deal of wealth actually flowed into the Kikuyu District, and in the years 1945, 1946 and 1947, I would myself categorically state, as a district commissioner at the time, that there was a good deal of freedom from want, and there was certainly freedom from fear because there was nothing that the people need be afraid of, and yet we still had the seeds of *Mau Mau* sown during that time.

When *Mau Mau* eventually burst upon Kenya the Government, having discovered, as I said earlier, that its normal method of dealing with it by the ordinary law had broken down, had no other alternative but to use Emergency powers. This Bill, I submit, Sir, is a prudent measure taken by the Government in order to make quite certain that such a situation cannot arise again, and as my hon. friend the Member for Legal Affairs has said, it is "a two-tiered Bill". I am not certain whether all hon. Members really understood what he meant when he said it is a "two-tiered Bill". This, in fact, gives the Governor power to take precautionary measures at a time when it looks as though an Emergency may break. If he feels that these precautionary measures are insufficient, then he is given greater powers in order to deal with whatever may eventuate. And I would like to say, that I think I may

be even quoting His Excellency himself, that anyone who is a law-abiding citizen has got nothing to fear either from the Bill or from the regulations which are made under the Bill, and I feel that those who must stand up in this House and oppose it must be afraid—afraid of something in themselves, in that they themselves are unable to agree that this is an insurance for the preservation of public security in this country.

Furthermore, I noticed that there was not one mention in this House by any of the Members who spoke of all the other regulations which are going to disappear when the Emergency regulations are lifted. I would like to show hon. Members exactly what the Emergency regulations now look like. Here are the Emergency regulations as they now stand. This is what you are being asked to pass. This Bill, together with a number of the regulations, which amount to three or four pages, in its place, as I say, as an insurance against the future. I think hon. Members should examine it. Certain hon. Members talked about bad feelings, and the hon. Member for the Central Province South said that Government should positively find out what makes people discontented. Now, I am surprised that that hon. Member did not once mention in his speech the fact that the Kikuyu, Embu and Meru pass system will disappear with the lifting of the Emergency. He knows, as well as I do, that this system, at the moment, is causing grave dissatisfaction, and a great deal of discontentment amongst his own people, yet he omitted to mention in this House this afternoon that, in fact, the end of the Emergency would bring a considerable relief to a lot of his own people. All he did, as my hon. friend the Specially Elected Member, Mr. Waweru, said, was to attack the Government for being negative. He called upon me to state that this is not a direct borrowing from the Emergency regulations, and I can tell him that the Bill itself is not a direct borrowing from the Emergency regulations, but the regulations are, for the reasons which His Excellency gave himself, in introducing his speech to the House last November. All the hon. Member was able to do was to say that he disagreed with the Government and he opposed the Motion inherent in introducing this Bill.

[The Chief Secretary]

Sir, I feel that we want to see a greater sense of responsibility in Members of this House in telling the people not only in this House—those people who have come to listen—but the people throughout the country, the true facts, and the true facts are that Government is taking powers to make quite certain that the calamity which engulfed everyone in this country and, as has been admitted by the Member for Central Rift, the African most, will not be repeated, and I suggest that that is the line which hon. Members should take now and for the future, and that they should not spend their time, as far as I can make out, making political speeches or political capital out of the fact that every time the Government wishes to introduce a Bill which we believe is in the interests of all people that they should do nothing but oppose it.

Sir, I beg to support.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, I do not think I need detain the House very long because my hon. friend the Chief Secretary and, indeed, a number of other speakers, have already made the points on the substance and need for this Bill, which I need not therefore repeat. I will therefore deal, Mr. Speaker, with a number of points raised in individual speeches.

The hon. Member for Nyanza Central, apart from points which have already been answered, maintained that—I imagine his own people—the Africans should be able to challenge the law and Government policy decisions which they do not like. He asked, "Why should they accept?" Well, of course, the answer is that they are not asked to accept them. They are perfectly entitled to criticize, to disagree. They are perfectly entitled to advocate change. What they are not entitled to do is to carry their differences and disagreements to the point of unlawful means, violence, intimidation and the deliberate fostering of disorder, and it is the latter manifestation of disagreement and opposition that this Bill is aimed at. He, and a number of other Members from his part of the House, suggested that the ordinary laws were adequate, but if the ordinary laws were adequate well, in the first place we

would not be making provision for these additional powers, and if the ordinary laws are adequate we shall never need to use these additional powers, and only, therefore, to the extent to which the ordinary laws are not adequate are these powers necessary to be held in reserve and will it ever be necessary to use them.

I am glad to have the assurance of a number of hon. African Members that they are with the Government at least in wishing to avoid a recurrence of the Emergency and of the misery and bloodshed and senseless violence which characterized those unhappy days. I do suggest to them that one of the main ways in which they could exhibit their desire to avoid any recurrence—one of the ways in which they could identify themselves with Government's efforts to prevent any such recurrence—one of the ways, therefore, in which they could do real service to their people, would be to join with us and the rest of the House in passing this Bill.

The hon. Member for Nairobi Area made a number of points. He said he was one of the Members who said that the Government already had enough powers, and they have exercised those powers since 1952. I did interrupt him to try and put him straight on that, but I am not sure that I succeeded because, as the Governor announced in his Speech, the source of the Emergency powers under which we have acted, and restored security to the state to which it has been restored to today—the source of those powers is the Emergency Powers Order in Council. That is what the Secretary of State has recently described as the "sledgehammer". It remains available. We are putting it aside because we hope we shall never need it again, but it is still going to be there. The trouble is that when you start taking sledgehammers to solve problems you do an awful lot of damage. They are very cumbersome and ponderous weapons, and when you start using the sledgehammer of Emergency powers, when you start stigmatizing a country as a country under Emergency conditions, you so undermine confidence, not only within that country, but outside it, that you do great harm. Now, our plan is this. We shall have that sledgehammer, but God grant we shall never want to use it again—we shall never need to use

[The Minister for Legal Affairs]

In order to ensure that we do not have to use it and do the damage which its use, however necessary, also involves, we are taking not a sledgehammer, but a smaller weapon in this Bill—a weapon which will enable us to act in time to prevent the erosion of the state of law and order which leads to that stage of crisis which has been described by my hon. friend the Chief Secretary, when, virtually, the state of law and order—the rule of law—the administration of criminal justice breaks down, because the atmosphere of fear and intimidation in the country is such that men are not prepared, save very few heroic men, to stand up and tell their stories in the open glare of the publicity of the courts. I think I have on previous occasions reminded the House that in the three months in the beginning of the Emergency, I think it was 37 Crown witnesses were murdered. That, perhaps, gives an indication of the state of fear, of the breakdown of the very foundations of criminal justice. Criminal justice is founded on the testimony of witnesses, the testimony of truth and, of course, if the state of law and order is so eroded, if the conditions of the country are such that the processes of criminal justice cannot work, then the rule of law breaks down, and it is to sustain the rule of law, to prevent those conditions arising, that we need these powers—not the full sledgehammer, something less, something that will prevent, God willing, our ever having to use the full sledgehammer again.

The hon. Member also said that the Emergency regulations were debated in this Council. He was in error, I think, in that, they being made under an Order in Council, they were never debated as such—a small point; I am merely correcting what I think was a misapprehension on his part.

He then went on to say that these regulations, the regulations under the Preservation of Public Security Bill, were finally determined by the Governor himself. But these regulations, being made under a local statute will be subject under the Rules and Regulations (Laying) Ordinance, to debate in this House; if a Member ever wishes to initiate such a debate, there is provision for it.

He referred to the Human Rights Convention, not only to Article 5 of that Convention which prohibits imprisonment without trial but, also Article 15 which allows derogation in times of war or national emergency threatening the life of the nation. There is no necessity under that article to declare an emergency. One of the things about an emergency is that it must always be a question of fact and a declaration makes no difference to that issue; it has a certain evidentiary value but it is not in itself conclusive, and in fact it can create more difficulty than if there is no such declaration, as I shall mention in a moment.

Just a passing reference to the light relief, the knock-about comedy turn by which we were entertained regarding the freedom of the Press. May I just, perhaps, dispose of the misapprehension in the mind of the hon. and misguided Member by re-reading the paragraph which he read, that is to say the power to make by regulation provision for the prohibition of the publication and dissemination of matter prejudicial to public security, not publication and dissemination of any matter, but of matter, and matter only, prejudicial to public security and, to the extent necessary for that purpose, for the regulation and control of the production, publishing, sale, supply, distribution and possession of publications. To suggest that that power is a denial or negation of the freedom of the Press is, to put it in most Christian words, an error. If the hon. gentleman had ever cared to refer to the Human Rights Convention to which my hon. friend the Member for Nairobi Area referred, he would see, I think it is Article 10, the article relating to freedom of the Press, freedom of expression, and he would have observed that that article is qualified by reference to the necessities of security, by reference also to the responsibility of those who claim the freedom to respect the reputation and the rights of other persons. What this does, this particular paragraph, is to take power to act against, not freedom of the Press, that we will sustain, but against licence by the Press.

The hon. Member then made the really astonishing remark that the local Press is controlled by the Government. Speaking as a Minister of the Government, I

[The Minister for Legal Affairs] may say that this is a phenomenon which has previously escaped my notice!

However, I pass, as I say, the light relief.

Now my hon. and learned friend the Specially Elected Member Mr. Stade made one or two points with which I shall end. The hon. Member for Western Electoral Area echoed him in certain respects. In the first place, as I think must be clear to all Members, it is the intention of the Governor to publish a notice in the *Gazette* under clause 3. It is not the intention for the present, at any rate, to publish a notice under clause 4. That is to say that, as the Governor announced in his speech, he does feel that it is necessary in the circumstances prevailing to exercise some of the powers for which clause 3 provides. He does not consider at the moment it is necessary to exercise any of the powers for which clause 4 provides, and I think this is, perhaps, where I can satisfy the mind of the hon. Member for Western Electoral Area. These regulations, as you will observe, make no provision for the detention of persons or for compulsory work or service. The detention of persons in so far as it is necessary in order to clear up the aftermath of the Emergency, will be dealt with by the Detained and Restricted Persons Bill and regulations under that Bill. But for the purposes of the control of political organizations, and meetings and of the control of villages which is contained in these regulations, it will be necessary, and it is the Governor's intention, to publish a notice under clause 3 which alone will give him the power to make those regulations. It is in accordance with his proclaimed intention at the time he made his announcement to this House.

The hon. Specially Elected Member, Mr. Stade, queried the wording of paragraph (c) of clause 3 (2). I shall in the Committee Stage invite the Chairman, Mr. Speaker, to make two small amendments under his standing orders, that is to say to insert a comma after the expression "make provision for" and another comma after the expression "authorize the doing of". This is merely to establish that the word "and" in that particular paragraph is used disjunctively and not conjunctively. After very careful

examination I am satisfied that will suffice in terms of flexibility and the applicability of that paragraph to give us the power we need, together with the powers in other parts of the Bill, to provide in Part V for the punishment of terrorists.

I have mentioned already, Mr. Speaker, the question of declaring a state of emergency or declaring that a particular state of affairs exists. It has been found by experience here and elsewhere that whereas it is right and proper that one should establish the criterion to be applied in bringing these powers, such legislation as this, into operation, it is both unnecessary and, indeed, inadvisable, and may bring difficulties, to start trying to label a particular state of affairs with a particular label. You have got the word "emergency" and you can refer to a particular state of affairs as an emergency but if you try to qualify that phrase or introduce other phrases, you get into great difficulties and I think it is much better that we should stand on the criteria which the Bill imports and not attempt to attach precise labels to those criteria.

I think there is no other point. Mr. Speaker, on which I need detain the House any longer and I beg to move.

Question proposed.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the Whole Council tomorrow.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): That brings us to the time for the Adjournment of business. Therefore I adjourn Council until 2.15 p.m. tomorrow, Tuesday, 5th January.

The House rose at Thirty-five minutes past Six o'clock.

Tuesday, 5th January, 1960

The House met at fifteen minutes past Two o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

NOTICES OF MOTIONS

SOCIAL SERVICE LEAGUE—PURCHASE OF NURSING HOME

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Speaker, I beg to give notice of the following Motion:—

THAT this Council notes that the sum of £100,000 on a £ for £ basis, which was approved by the Council in 1953, will be made available to the Social Service League for the purchase of the Parklands Nursing Home by the provision of £40,000 from the Recurrent Budget in 1959/60, the balance to be available in later years from the Development Budget, when required, for the future extension of the Hospital Scheme in accordance with plans approved by the Government.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 56

MAJOR DAY asked the Minister for Agriculture, Animal Husbandry and Water Resources:—

- (1) Is the Minister aware that there is a lack of confidence among producers in the grading of pigs at Uplands?
- (2) If the position is unsatisfactory, what steps does he propose to take to rectify matters?

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I beg to reply:—

- (1) Yes.
- (2) The Government does not accept that there are any good grounds for dissatisfaction with the standard of grading, which is believed to be fair and efficient. However,

in accordance with agreements reached with the Pig Industry Board and Uplands Bacon Factory, arrangements are being made to appoint a Government Grader to the factory within the next few months.

MAJOR DAY: Mr. Speaker, Sir, arising out of the Minister's reply, I do support —(Inaudible.)—considerable lack of confidence in the grading scheme—(Inaudible.).

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Major Day, I am afraid that you are embarking on a speech!—

QUESTION No. 63

MRS. SHAW asked the Minister for Legal Affairs is Government satisfied that the Official Receiver's Department is adequately staffed to deal with the present volume of insolvency work in a prompt and efficient manner?

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, I beg to reply. During the last two years the Official Receiver's Department has been in some difficulty, due to a rapid increase in the number of bankruptcies. Steps have, however, now been taken to remedy the situation. The only section in which some delays are still being experienced is the one which deals with the distribution of money to creditors, and in order to remedy this defect the staff in that section is being increased. It is hoped that delay in distributions to creditors will be progressively reduced as accumulated arrears are worked off during this year.

MRS. SHAW: Arising out of that reply, Mr. Speaker, I would like to thank the Minister for his reply, but to ask if he is aware that some of the difficulty caused has been over the insurance of property taken over in bankruptcy cases by the Official Receiver and which have not been covered by insurance against burglary or fire, and I should like to know if that, too, will be dealt with.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): I will certainly look into that, Mr. Speaker.

QUESTION No. 64

MR. BLUNDELL asked the Minister for Education, Labour and Lands will the Minister for Labour state whether it is the intention of his Ministry to create a post within the Labour Department (in the 1960-61 Estimates), for an officer whose special duties will be to interest commerce and industry in the training and advance of Africans at all levels of business and commercial activity?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I apologize in advance for the length of this reply. I accept the need for the training and advance of Africans and, indeed, other races, at all levels of business and commercial activity, but I am not convinced that this can be achieved by the creation of a special post as suggested. The object can, in my view, best be approached through the co-ordination and intensification of the work of four existing sections of the Labour Department under the direct guidance of the Labour Commissioner. Firstly, the training section, particularly by means of residential supervisory training courses for individual industries. Secondly, the trade testing and apprenticeship section which will shortly be responsible for the administration of the Industrial Training Ordinance in addition to its present duties. Thirdly, the employment services organization in connexion with which I have proposed the creation of a new post for a specialist officer who would organize and develop the service to meet present-day needs including linking it to a system of career guidance for school leavers. Lastly, the Aptitude Testing Unit. I am glad to report about the unit that through its effectiveness in reducing wastage rates to negligible proportions more and more employers are becoming aware of its value in the selection of people for training. It is the combined effect of the work of these sections of the Department which will, I believe, achieve the aims envisaged in the Question.

MR. BLUNDELL: While grateful to the hon. Minister for his lengthy reply, may I ask him to which of the sections he would attribute the actual responsibility of dealing with industry itself, interesting

the employer in the whole frame of mind which trains the people of this country from the bottom upwards?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): In reply to that, Sir, I would say that would be the entire Labour Department and in a co-ordinated way.

MR. BLUNDELL: Would not the hon. Minister agree that it would probably be better pursued if he could specifically designate the responsibility to one officer, or give the responsibility to one officer?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I would be glad to consider that suggestion.

SIR CHARLES MARKHAM: Could I ask, Mr. Speaker, which member of the Labour Department qualifies for the "bottoms up" expression?

QUESTION No. 66

MR. ALEXANDER asked the Minister for Finance and Development is the Minister prepared to re-examine the question of Income Tax on owner-occupied houses with a view to abolishing a part or all of this tax as an encouragement to the stabilizing factor resulting from home owners in any community?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Yes, Sir, but I cannot encourage the hon. Member to hope that this re-examination will enable me to make any change in the existing arrangements.

MR. ALEXANDER: Mr. Speaker, Sir, whilst expressing little hope, would the Minister state whether he recognizes that those who invest in life assurance and those who invest in tax-free bonds are obtaining a very unfair advantage over those who invest in their own homes?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir, that is a matter of opinion.

MR. TYSON: Mr. Speaker, Sir, may I suggest that the Minister for Finance should also consider the question of exceptional taxation for people who invest in local industries?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir, I am sure that my hon.

[The Minister for Finance and Development] friend will not expect me to anticipate my Budget statement.

MR. BLUNDELL: Mr. Speaker, is not the hon. Minister prepared to accept the present system of levying tax on the valuation of houses does penalize the man who invests in his own house, which is the exact opposite, I assume, of what the hon. Minister wants to achieve.

MR. ALEXANDER: Mr. Speaker, Sir, in stating just now that it was a matter of opinion whether those who invest in life assurance or tax-free bonds are at a disadvantage, does the Minister not agree that it is a fact and not a matter of opinion that those who invest in life assurance and tax-free bonds do get an advantage?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir, I have nothing to add to the answer I gave before.

COMMITTEE OF THE WHOLE COUNCIL.

Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

[Mr. Bechgaard, Q.C., in the Chair]

The Preservation of Public Security Bill
Clause 2 agreed to.

Clause 3

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, I do not wish to move a formal amendment but merely to invite you to insert commas in paragraph 3 (2) (c): a comma after the opening phrase "make provision for" and a comma after the succeeding phrase "and authorize the doing of".

THE DEPUTY CHAIRMAN (Mr. Bechgaard): I can do that under Standing Orders.

MR. SLADE: Mr. Chairman, I am not proposing any amendment to this clause; but with reference to what I had to say about it in the Second Reading, and also the Minister's reply, I would like to reiterate this question of the form of notice by which the Governor will apply

this clause. I do think it is important, when he considers the position grave enough to justify application of this clause and use of the powers thereunder, that in the notice whereby he does so he should say something to the effect that it is in view of the present position; and I would like to be assured by the Minister that when a notice is made under clause 3, it will contain the substance of the clause, with wording to the effect that it is necessary for the preservation of public security that he assumes these powers.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): I gladly give that assurance, Sir.

MR. ALEXANDER: Mr. Chairman, clause 3 of the Bill is the invoking clause in respect of clause 2 which does seek to define "public security", and in clause 2 it does say, in describing public security, "the prevention and suppression of intimidation." Now, I am seeking information here, Mr. Chairman—as to what the Government has in mind regarding this particular evil, because, in reading clause 3, the clause we are now dealing with, there does not appear to be any particular reference to intimidation although there is reference to many of the other matters that are mentioned under the description "public security". Neither, Mr. Chairman, do I find anything dealing with intimidation in the rules or the regulations which were tabled yesterday and which the Minister made reference to when he was explaining this particular Bill yesterday; and when he replies I would particularly like him to deal with this subject because the greatest curse today in Africa is not locusts or droughts, but from the north to the south, from the east to the west of the whole of Africa, the greatest curse, the greatest menace that we have is the menace of intimidation, and I do not mean just mere abuse as one might discover in advanced societies and in advanced countries but the kind that Africa produces which invariably means physical disability, either threatened or actual; and it works with very great guile and very great subtlety, and that is why it is important that we should find out under this clause today what the intentions of the Government are. Of course, this guile and subtlety is strengthened in its turn by the potent wickedness and

[Mr. Alexander] the licence over to his own name. Now, that was done without any authorization by the person who applied for the licence in the first place and it is a type of abuse that is likely to occur again; and I believe that what would be most useful—

DR. KISUMU: Mr. Chairman, on a point of order, I think the Member for Nairobi and I were the Members involved; and I was completely aware of what was happening. I must therefore request the Member for Nairobi West to withdraw.

MR. ALEXANDER: Mr. Chairman, I did not allow myself to be interrupted on a point of explanation from the Member for Central Area. I am stating what I believe to be the facts. I have no reason to contradict them whatsoever and I am giving this as an example to the Minister of the type of abuse that may well occur. It is easy; it is tempting for it to occur and I am suggesting to him that when he replies he does give us an assurance that there will be in the regulations rules introduced that will make perfectly certain that this sort of a switch-over cannot happen again.

MR. MBOYA: Mr. Chairman, with due respect, is not the Member called upon to substantiate his statements? He makes an insinuation that there was a deliberate attempt to abuse the law or the regulations and we call upon him to substantiate and now mention the names of the Members.

THE DEPUTY CHAIRMAN (Mr. Bechgaard): As I understood the Member for Nairobi West he merely stated that one Member had telephoned the District Officer at Kisii requesting the switching of the licence. There was no insinuation so far as I can see.

MR. MBOYA: Mr. Chairman, with due respect, the Member has said very distinctly that this sort of abuse should not be allowed. Now, what abuse does he refer to?

MR. ALEXANDER: I have referred to it, Mr. Chairman. I have nothing to add; that is my information.

THE DEPUTY CHAIRMAN (Mr. Bechgaard): There has been no direct allegation that I can see.

MR. ODINGA: Mr. Chairman, the last Member who has just sat down has made a very big charge on the African continent as a whole and I would ask

which no country completely shies. The hon. gentleman on the other side has referred to the incidence of intimidation in countries which claim to be advanced and civilized and I would be the first one to acknowledge that intimidation, physical violence, occur—both of them occur—in all forms of communities from the most primitive to the most civilized. That is a fact of life and I do not think it is one which anyone can or need quarrel with. The fact of the matter is that in this part of the country—and let us leave the rest of the world, I feel our own problems are enough for the moment—in this part of the country there is a danger of intimidation affecting men's thoughts, actions, plans, in fact every form of human activity. I think it is in a sense more apparent and real among persons who are, shall we say, less advanced in the forms of civilized life—I am not going to argue the advantages or disadvantages of that form of life—I believe it is less advanced amongst the more primitive part of the population than amongst the more advanced. And there is no question to my mind, and I speak, I hope, as an objective observer of the local scene, there is no question to my mind that intimidation in this country and in the politics of this country is a real danger and we would be deluding ourselves if we did not acknowledge that fact.

But, Sir, it is not an abnormal phenomenon. It is, you might say, however regretfully, a chronic phenomenon, if there is such a thing as a chronic phenomenon. At any rate, it has chronic characteristics; it exists most of the time. It is not therefore something which, unless it assumes abnormal proportions and has unusually grave consequences, it is not such a thing as we would normally require to make provision for under this sort of legislation because we do have our standing substantive legislation—penal, legislation—dealing with such things as intimidation. We have a number of sections in our Penal Code and it will be recollected, for instance, that by an amendment in 1955 we introduced a section which was side-noted "Intimidation". We introduced, I think it was in 1958, sections dealing with watching and besetting, with incitement to violence and disobedience of the law. All these are manifestations of one form

[Mr. Odunga] permission that he should withdraw a charge which he has made very well on the African continent, that it is characteristic of the African continent to have one of the worst kinds of intimidation. I would only give him a very good example. We know one of the best countries in this world and the most civilized country and that is America—the United States of America—

Hon. MEMBERS: Question!

MR. ODINGA: There we have lynching of the Negroes going on and I think that that is one of the worst kinds of intimidation in the whole world. Similar things happened in London at Notting Hill recently and happens in all European countries. Could he not actually, Mr. Chairman, be asked to withdraw such a very wild charge which is completely unnecessary for such an hon. Member himself?

THE DEPUTY CHAIRMAN (Mr. Bechgaard): I think we are in danger of going off the point here! The Member for Nairobi West merely said that intimidation exists in Africa and no doubt exists everywhere else and he has asked the Minister to make assurances in regard to safeguards against intimidation.

MR. ODINGA: Mr. Chairman, with due respect, I would only say that he was making it that it is believe that the situation here was unique and so needed special safeguards as if Africa were quite different from other countries of the world.

THE DEPUTY CHAIRMAN (Mr. Bechgaard): I think we have gone far enough at this particular point of intimidation. There seems specific insinuation in regard to East Africa or Africa. Intimidation does exist everywhere in some form or another.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, I think that one must acknowledge that wherever the position may be elsewhere there certainly is in this part of Africa a very considerable under-current of intimidation—I would say it is endemic to this country, to this part of Africa. I think if I may say so without in any way appearing patronizing, I think it is characteristic of any country as it is developing up. I think it is a characteristic

[The Minister for Legal Affairs] or another of intimidation. There are other forms and I shall before very long in the course of this Session be presenting to this House other penal provisions designed to deal with other forms and manifestations of intimidation. The fact of the matter, as I say, is that it is a problem of everyday life, not merely a problem of the form of emergency or near emergency conditions with which this legislation deals. It is in regard to, perhaps, its consequences—to the consequences of intimidation, as one factor—that we may be driven to take exceptional powers to deal with a situation which is caused by intimidation, but it is not in itself a special problem to be dealt with by this special legislation. It is an everyday problem to be dealt with by standing substantive legislation. May I also say in regard to intimidation that one cannot eliminate intimidation—one cannot eliminate any other form of crime, violence or threat of violence in this House. We can write as many laws as we like, but that is not an answer. It is bound to be a problem of practical enforcement. Now practical enforcement in regard to a matter such as intimidation is, as all Members will realize, a matter of great difficulty. It is a matter in which, if we are to achieve anything, and I speak as representing the forces of the law, the agents of the law, we need the fullest possible co-operation from all Members of the public. We need that co-operation, and we shall perhaps be assisted in getting it if we can have the fullest possible co-operation from all Members of this House in encouraging their people to assist the agents of the law, the forces of law and order, in suppressing intimidation, in bringing it to the front when it does occur, and in therefore helping to eliminate it if possible, and at any rate to reduce its incidence. That, I think, Mr. Chairman, is rather a long effusion on intimidation, but I think it is an important subject, and I think we want all of us to do our best to eliminate intimidation. Let us disagree—I am not talking so much about this House—but let us disagree in this country, the one with the other. That is our right—our inalienable right. Let us disagree as much as we like, but let us disagree honourably, and not bring the weapons of the savage into it—the weapons of the savage which

no man, however advanced and however civilized, has completely set aside because we know of incidents, which have been referred to, in America, in Notting Hill and in any part of the world you like to mention. There is still a bit of the savage in every man, but let us suppress it in ourselves.

Now I have rather forgotten where we started. Perhaps the hon. Member would not mind refreshing my memory.

MR. ALEXANDER: Mr. Chairman, the last point I asked was this. I think roughly my words were, let us be perfectly clear that if this Bill became law tomorrow that the state of intimidation in this country today is of such a nature that the law would have to be invoked immediately.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): I think I have already dealt with that problem in the course of my excessively long dissertation on intimidation by saying that I do not think it is a special or abnormal problem. It is an everyday problem which we want to deal with in our everyday law and in our everyday lives.

The other point which the hon. Member mentioned—it has now come back to me, although he did not remind me of it—was the point about meetings. I do not wish to enter into any argument as to whether one person did or did not get a licence changed to his name, but I am quite satisfied that there is no necessity to add to the Draft Regulations which I tabled yesterday in this regard because the discretion rests entirely with the district commissioner, and it is for him to satisfy himself that if there is a change, it is a change which is known to and desired by both parties and one which he is prepared to concur in. Whether or not he was misled in this case, or in any other case, is a separate matter. The fact of the matter is that provisions in the regulations, I am quite satisfied, are entirely adequate in that regard.

MR. MBOYA: Mr. Chairman, first I want to put on record at least the facts as I know them regarding the incident mentioned by the Member for Nairobi West. I feel it is only fair that since he has made these remarks, that the House, indeed the country should know these facts.

[Mr. Mboya]

Both the Members referred to, namely the Member for Central Province South and myself, are not constituency members of South Nyanza. Consequently if we travel to South Nyanza we have to be invited by an organization in that district. In this particular case the organization had applied for a licence in the names of Dr. Kiiano and myself. Later on the organization found that the Member for Central Province South did not confirm his ability to attend or not, and since the applications have to be reviewed or considered in Nairobi it was necessary to get the final decision in the shortest possible time. In the circumstances a licence was issued when I was in Europe. When I returned I indicated that I might not be able to go and address the meeting and asked the organization and the district commissioner whether they would allow Dr. Kiiano to go instead, since he was now ready to address that meeting. Now those are the facts. If that is an attempt to defeat the law, then, of course, I do not know what we should be doing in order to try and comply with the law. Now in so far as this particular question was concerned, I would not at this stage, although I felt like doing it, indulge in any further debate with the hon. Member for Nairobi West. I am not sure what he wants to introduce both in this House and in the country, but that is a matter for him to decide. The consequences will not be limited only to ourselves. In so far as this piece of legislation is concerned we said yesterday, and we want to say again, that clauses such as this cannot merely be looked upon in terms of the words and phraseology that are used here. We are concerned with the clauses mainly in terms of how they are going to be interpreted, and this is a point which I must over emphasize to the Government, because we have experienced a lot of the difference between what the Government tell us in the House of what the implications are of any piece of legislation, or what sometimes is done outside by those charged to implement that legislation.

Now, Sir, with due respect, if some Members of this House are capable in fact of misunderstanding this piece of

legislation, then one must ask how far laymen outside this House will, in fact, misunderstand, and those who may be charged with interpreting it or administering it may, in fact, go to excesses. We must draw the attention of the Government to this particular position. In fact, we are not against the preservation of public security, but more that we are—very afraid of the manner in which it is done. And the second aspect of this is the fact that we are aware that for quite some time, not only in the past, but possibly in the future, some section of the community in this country will be much more affected by this legislation than others. In fact here this afternoon we have seen a glimpse of what will happen because some people automatically believe that when we legislate against intimidation, subversion and so on, the people we are dealing with in that particular case must, of necessity, be Africans or indigenous people of Africa. Now, Sir, if that is the implication which is read in this piece of legislation by hon. European Members in this House; then I say we are definitely justified in opposing it and calling it racial or discriminatory in its application. We were encouraged by the words of the Attorney-General and we have always been encouraged when he speaks because he seems to be much more sane than quite a few people in this House. But unfortunately the Attorney-General is not the man who is going to interpret this legislation. By the indication we have heard here this afternoon there is an impression now being created and will be created in the minds of the African public that this piece of legislation might, in fact, be put into action tomorrow. There is already the indication by the Member for Nairobi West that in his opinion we should call on the Government to use it immediately it becomes law tomorrow. Now if the Member for Nairobi West uses his very powerful and eloquent speeches and goes round the country building European public opinion calling on the Government to put into effect this piece of legislation, I have no doubt whom he would be having in mind—as victims or target. He has only one people in mind in this country, and that is the Africans. They are the only devils. Now my submission is that there

[Mr. Mboya] are quite a few black people among the White community in this country, and quite a few white people among the Black community in this country.

Clause 3 agreed to.

Clauses 4, 5, 6, 7 and 8 agreed to.

Title agreed to.

Clause 1

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, Sir, may I invite you also under your powers under Standing Orders to make a formal correction of the date, 1959, to 1960.

THE DEPUTY CHAIRMAN (Mr. Bechgaard): I will alter 1959 in clause 1 to 1960 and make the consequential alteration to the heading of the Bill, 1959 to 1960.

Clause 1, as amended, agreed to.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, Sir, I beg to move that the Committee do report the Preservation of Public Security Bill without amendment to the Council.

The question was put and carried.

Council resumed.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

BILL

REPORT AND THIRD READING

The Preservation of Public Security Bill

MR. BECHGAARD: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has considered the Preservation of Public Security Bill and has approved the same without amendment.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, I beg to move that the Preservation of Public Security Bill be now read a Third Time.

MR. WUBI seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

BILL

SECOND READING

The Detained and Restricted Persons (Special Provisions) Bill

Order for Second Reading read.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, I beg to move that the Detained and Restricted Persons (Special Provisions) Bill be now read a Second Time.

Sir, this is the second of the two Bills which, as His Excellency announced in his Speech at the beginning of this Session, must precede the proclamation bringing to an end the application of emergency powers under the Emergency Powers Orders in Council. It is the measure which will enable us, and is, as I think this House will acknowledge, absolutely essential, to continue to hold under controls of varying stringency from the conditions of confinement of detention to the relatively relaxed controls of restriction in comparatively large areas, to continue to hold under those controls those persons whom all our efforts over the past years to rehabilitate and bring to the point at which we can release them without danger to security have failed.

The Governor gave the figures in his Speech and if any hon. Member wishes to refer to those figures they are in the printed copy of his speech. They are figures which are being progressively reduced and have been phenomenally reduced over the last two to three years by the exceptionally able, exceptionally devoted efforts of all those officers in the Rehabilitation Service, those who have been concerned in the administration of camps and prisons, a truly spectacular achievement.

The structure of this Bill is that of an enabling Bill under which regulations will be made to fill in the practical details. I very much regret that I have not been in a position to lay on the Table before this House for the purposes of this debate a draft of the regulations to be made under this Bill, but there still remain a number of practical details to be settled and I will in the course of this speech give the House a picture of the main principles, the main structure, of those regulations as we propose them. But I will first take the House very briefly through the provisions of the Bill itself.

Now, the powers under the Bill to detain or restrict persons will be exercisable only in respect of that category of persons or those categories

[The Minister for Legal Affairs]

of persons which are contained in the definition in clause 2 (1) of the Bill of the phrase "specified persons". If hon. Members will turn to that definition they will see that it contains three categories, first, those persons who are subject to detention orders under the Emergency Regulations, second, those persons who are the subject of emergency restriction orders, under the Emergency Regulations and, thirdly, such persons as the Governor may declare, on the enactment of this Bill as an Ordinance, to be persons who, although for the time being are outside the Colony, would have to be brought under control in the interests of security if and when they should seek to return to this country.

Now, the first of those three categories, that embracing all persons the subjects of detention orders under the Emergency Regulations, is itself subdivisible. The first subdivision comprises those persons who are actually in detention at this moment—the material time is immediately prior to the commencement of this Bill as an Ordinance, those first of all, therefore, who are actually in detention. Secondly, those who are the subject of detention orders which have, however, been suspended on condition, that is to say those people, therefore, who are in a form of restriction under suspended detention orders. And the third subdivision comprises those persons in respect of whom detention orders have been made but await execution on the subjects of those orders being apprehended and brought under hand. That last category relates, of course, to the remaining terrorists at large.

Those are the categories of persons in respect of whom the powers of detention and restriction for which this Bill provides may be exercised.

Now, under clause 3, the main power to make regulations is contained. The purposes for which those regulations may be made are the detention of specified persons, the prohibition, restriction and control of residence and movement, that is to say, in our colloquial parlance, "restriction", of specified persons; and thirdly and consequentially on the foregoing, the powers of detention and

restrictions which may be imposed in regard to property, association, communication and the like.

By the proviso to subsection (1) of clause 3 it is required that there shall be a periodic review, carried out by the Governor or by a reviewing authority appointed by the Governor at least once every year, of the case of each person detained or restricted in pursuance of this Bill or of regulations made under it, and the purposes of that review are also set out in that proviso—in short, the review is to be directed at relaxing conditions of restriction as soon as any such relaxation may be justified, bringing to an end detention as soon as that step may be justified and, finally, bringing a man to the point of actual release as soon as that may be justified. It may be justified on grounds of rehabilitation or the effects of relaxation of restriction or removal from detention of a person and the effect of such a step on the progress of other specified persons in rehabilitation and their progress towards eventual release, because, of course, certain of those specified persons with whom we have to deal are persons of influence who have considerable effect, adversely or beneficially (usually, I fear, adversely), on the rehabilitation of other persons.

There are, in subsection (2) of clause 3, a number of subsidiary matters with which regulations may also deal.

So much, I think, for the Ordinance—the Bill which is, as I have said, an empowering one, the main substance of the provisions will be in the regulations.

Now, the regulations will provide for three types of orders. First, detention orders; second, restriction orders, and third, special restriction orders. Detention orders really need no explanation in that they will provide for what amounts to confinement of the persons who are subject to them in places of detention. Restriction orders will restrict the subjects of those orders to areas of restriction—relatively large areas—and the main and possibly the only one will prove to be that of the settlement at Galole on the Tana, an area of some 50 to 60 square miles.

Then there will be special restriction order which, one might say, are more of an individual character whereby the individuals to which those special restriction orders relate will be restricted to

[The Minister for Legal Affairs] other areas—areas other than those described, defined, as areas of restriction—areas elsewhere in the Colony, usually in the more remote parts, but where they may be restricted either alone or with relatively small numbers of other persons.

There will be in the regulations provision for transferability between these three categories, categories of persons subject to these three types of orders. That transferability is necessary for two reasons, first to ensure that there is provision for progress towards release in accordance with the progress made in rehabilitation, and secondly, there must be provision for reversion down the scale, so to speak, of any who fail to maintain progress in rehabilitation, or, for that matter, fail to make a start.

Now, there will be provision for appeals from orders in any one of these three categories. Appeals will lie to a tribunal which will be chaired by a judicial chairman, and this tribunal will be charged with the task, not only of hearing appeals, but also of carrying out the periodic reviews which are enjoined by the Bill, as I have already explained. The tribunal will render its report and recommendations to the Governor on each appeal or review which it concludes. The Governor will refer back to the tribunal any recommendation which he does not feel able to accept, together with his views, and it will be then for the tribunal to reconsider it in the light of His Excellency's views and any further information or material His Excellency may make available to them or which they may acquire from other sources, and then resubmit a report in the light of their reconsideration together with such recommendation, whether on the lines of the original recommendation or modifications of those recommendations or entirely fresh recommendations, as the tribunal may see fit.

Now, the administration of this system of control of "specified persons", whether by way of detention or by way of restriction, will be carried out by the Special Commissioner, who will be appointed under the regulations and who is in fact, as we know already, in post, having been setting up his organization ever since this form of organization was introduced as

a result or following the Fair Committee's Report. He will have his own organization of selected officers carrying out this extremely difficult task of reclaiming these men for society, and, in the meantime, of securing that they are held in such circumstances that they cannot menace society; in other words, society is to be immunized from them until they have been restored to that frame of mind which ensures that they will at least live without menacing their fellow men and society in general. The only "area of restriction" is likely to be at Galole on the Tana, and there will be provision for the persons restricted there to have their families with them. As the House already knows, there is already an established and flourishing agricultural settlement there where the persons already restricted there, many of them, do have their families. That, of course, will continue, and also there will continue the provision for the allotment of irrigated plots to those of the restricted persons who care to take them over and cultivate them and work on them; they will be granted leases of those plots and they will be given help, as they have indeed up to now been given help, in cultivation, in obtaining implements and fertilizers, and in disposing of the produce from their plots which they do not require for consumption by themselves and by their families.

There will be established a committee of inspection under the regulations charged with the duty of inspecting places of detention and areas of restriction. They will be required to make, not necessarily all together but through their membership, regular visits to places of detention and areas of restriction, there to examine the conditions obtaining in those places and areas, hear complaints, and investigate those complaints, and generally speaking keep an eye on the manner in which things are going on in those places. They will make reports of their visits and of complaints and applications which they receive and of any investigation and action which they have felt able to take on them, and also any recommendations which these visiting members of the committee may see fit to put forward.

That, Sir, is the general picture, as you might say a thumbnail sketch, of the structure of the regulations. There is, as

[The Minister for Legal Affairs] hon. Members will appreciate, a vast body of detail to be filled in to cover the administration of places of detention, the administration of areas of restriction, all the details about appeals and reviews and a large volume of detail in respect of all the matters which I have mentioned. Those regulations, as I say, are not in complete detail yet; that is why I have been unable to provide the House with copies of them. I think they will find them singularly dull as to detail, and perhaps my short summary of them will be more digestible than the full meal which they will get for their digestion in due course.

I think, Mr. Speaker, that I have covered the principles of this Bill, and I would leave the House to endorse the view—I have no doubt of it whatsoever—that it is absolutely essential for the protection of all law abiding citizens in this country, for the maintenance of security of this country, that we must, however regrettable it may be, maintain our control over these people until we have been able to rehabilitate them, bring them to the state when we can restore them to society with some assurance that they will not again cause the tragedies and miseries and unhappiness which they and those who were similarly infected caused to this unhappy country some seven years ago.

Sir, I beg to move.

MR. WEBB seconded.

Question proposed.

MR. ARAP MOI: Mr. Speaker, Sir, I should like to speak on certain clauses in this Bill. There are many things which Government ought to really think very seriously about. One of these clauses makes provision for areas which have been specified as restricted areas. I should like, Mr. Speaker, to touch only on very few and very important points from my own point of view.

Persons who have been restricted for seven years ought to have been brought to a court of justice rather than restrict them for seven years and others who have been to a court of justice have been in prison for seven years and they have come out and have again been restricted. Nevertheless, I do not want to start on those people who have been to a court of justice but I will confine myself to

persons who have been detained for seven years without being brought to trial, i.e. to a court of justice.

I should like to mention one person. There is a case here which we ought to take very seriously. Many of us have stated here and publicly that Koinage who is restricted at Kabarnet ought to be brought home and should remain with his family at his home in Kiambu. If the Government wishes to restrict him in his own home that is a case which might be considered justifiable but I do not think that such an old man is really dangerous to society. He does not consider anything but his own family and his own wealth in his own home; he does not think of any violence whatsoever and I do not think such a man has any ulterior motives other than going home.

There are also persons such as Odede and others who were not brought to a court of justice and I feel that Government ought to have justified its case by bringing them either to a court of justice or release them and send them to their own homes. I know Mr. Odede is a veterinary officer and does his work well and I do not see why the Government should restrict him to the area in which he now resides; and I would urge the Government before passing this Bill to consider such persons as people who have been found to have no connexion with *Mau Mau* or tell this House whether such persons are still having any connexion at all with such a society as prescribed in this Bill. Furthermore, Mr. Speaker, clause (2) refers to persons outside this Colony; and such persons to my knowledge, I feel, Sir, were not brought to a court of justice. The Government should have brought them to a court of law, whether they were really connected with this Society which is mentioned in this Bill otherwise, they should be allowed to come in without being restricted.

Mr. Speaker, those are all the points I have to raise and I would like the Government seriously to consider the old Koinage to come back home immediately.

Mr. Speaker, I beg to oppose.

DR. KIJANO: Mr. Speaker, Sir, I rise to oppose this Bill. I do this because in the first place some of us are not quite satisfied with this general term of "rehabilitation". Since the time when

[Dr. Kioko] hundreds and hundreds of people from my Province began leaving the detention camps and coming back home they have been able to collect a considerable amount of information on the methods used in rehabilitation process, and while Government continues to praise itself for having done what they considered a miracle in bringing back to the ordinary society thousands and thousands of people; nevertheless those people give us reports of what they went through and those reports indicate that some of the methods used in the rehabilitation process were not methods that were designed to make them good citizens but some of them did include such treatment as to make them wonder whether this was a training for being good citizens and I have a feeling, Mr. Speaker, that some of the men, the so-called irreconcilables, are ordinary human persons, human beings, who refuse to subject themselves to some of the questions and some of the undertakings that they are expected to give. For example, Sir, it is very likely, and we can substantiate that, that in a number of former detention camps such questions were asked as, "Will you support Government when you come out of the detention camp?" Well, Sir, we are here in this Legislative Council and we do not necessarily support Government and yet I hope we are not considered candidates for the remaining detention camps. I feel, Sir, that a man can be entirely opposed to Government and still be non-violent and still against the subversion and yet refuse to give such an undertaking that when he leaves he shall support the Government; and therefore, Sir, there is a case for us to be convinced that rehabilitation process is not any form of either physical torture or brain washing.

Secondly, Sir, I want to make it clear that the people who are referred to in section 3 are now supposed to be outside Kenya and are expected to be put in detention if they do come back. In fact we would like to know very specifically who they are and what they have done to warrant this kind of a provision. May I point out that they are accused of being members of an entirely anti-white secret society and yet these people, if I remember these people and if I have the right names in mind, have been

living in Britain next to white people and have been considered pretty good neighbours of those white people. What is it that makes the Government of Kenya so afraid of them if they return here? Will they become anti-white when they take the ship or plane and come back to Kenya? We would like the Government to come clean and say, "These are the people and these are the reasons," and I feel, Sir, that the people that they have in mind have been outside Kenya during the worst part of the Emergency. They have not actually and obviously in accordance with my knowledge perpetuated any action to warrant them to be classified in the nature of what the Government would call terrorists.

Now, Sir, we come to some of the illogical aspects of this Bill. We have people restricted because they are not good members of society and yet at the same time some of them are performing such jobs for Government and for society as to make us wonder what else they can do. I know of one who is a teacher in a respectable school in my constituency in Thika, a teacher by the name of Mr. Gichuru, who has been producing some of the best results so far as examinations are concerned, and this is a Catholic school. He mingles freely with students and the rest of the teachers and the Fathers too. His students pass very well and yet the same person is often not allowed even to go out of that general area and to come back to normal society. But surely, Sir, if a man is considered good enough and fit enough to teach the minds of our young men then he is certainly good enough and fit enough to mix freely with society. Therefore, Sir, Government is entirely illogical and unreasonable to hold such men in restriction. Also, let us take the case touched on by the previous speaker. An old man of about 90 years: if the Government is afraid of such a man to come and jeopardize society I must begin to wonder what the Minister for Internal Security and Defence is supposed to be doing if he cannot withstand the presence of a 90-year-old man, and the Minister, I am told, is about 50 years old. Sir, I think the case of Koinange particularly makes this Government stand in condemnation because here is a man whose only request has been to be allowed to go

[Dr. Kioko] back and mix with his family, his wives, and even if he wanted to he could not even take an active part in the politics of Kenya. So why is the Government afraid of a man like that and yet deny that the Government is not based on fear and suspicion rather than on realism. I think the case of Chief Koinange is a shameful case and any further detention or restriction of that person now, I think, is unjustifiable and in my humble opinion is inhuman. I call upon the Government to see to that case immediately.

Now, Sir, we come to the question of the Galole area. I know that the Government has found it wise to change the name of Hola to Galole, but in the minds of us we still think in terms of Hola and people should know that Hola and Galole are one and the same thing. Now, that place is supposed to be an area in which people will be restricted and yet are allowed to lead normal lives. But, Sir, which is the best way to adapt somebody to society? Which is the best way to bring a man back to what is considered normal? Is it the best method to exclude that person from society? Is it wise? Would sociologists, men more learned than we are in this matter, say that the best thing to do is to take a person and hide him far away when he is not actively violent? I think, Sir, this kind of seclusion, this kind of putting them in queer corners in the dry areas of Kenya could even make a normal man abnormal. If a man lives away from society for too long instead of being so-called rehabilitated, he may actually be worsened by the exclusion, and I feel, Sir, that one of the best ways of having these people become ordinary members of society is not to hide them from society.

Now, Sir, there have been differences. We have been informed by the hon. Attorney-General that there will be committees and tribunals to look into this case. First, I would like to be assured as to what the Government intends to do with regard to some of the views expressed by the Fair Committee which included Canon Bewes, who knows my people very well and who has lived in this country for a very long time. There has been quite a big difference of opinion between the Fair Commit-

tee's finding on the K.K.M. and the opinion of the Government. We have been told that this was a dangerous, subversive, perhaps inclined to be violent, type of organization, and when the Committee said that that was not essentially true that perhaps this organization might be secret, and I think it was secret, but that nevertheless it might not have had the potentiality of violence that Government had said it had. Now, Sir, are we going to be assured by the Government that if the present Committee is set up the Government will accept their findings or is Government going to say that they appointed this Committee to do the job but that they do not agree with its findings, so that they will continue with their own way of dealing with these people?

On the question of the Emergency and the detained people, I am afraid that we cannot consider that this Bill is the correct thing to pass in this House. There is the question of the people who are detained at Lodwar. It is said by the Government that Jomo Kenyatta was not detained or restricted in accordance with the Emergency Regulations but rather according to some law which was passed in 1948 or 1949. But, Sir, as far as we have been told by this very same Government, his name and the Emergency are very much connected and here we have this legalistic exercise to try and remove him from the circle of the Emergency so that some of the relaxations of these Regulations do not benefit him and his colleagues at Lodwar.

Sir, I think that it is a fact whether Government likes it or not that the longer Government keeps these people away at Lodwar, the more the majority of the African people will respect him and clamour for their return. The mere detention of an individual does not necessarily mean that that individual has ceased to have any influence among the people. I think the Government is very aware that the name of Jomo Kenyatta is a very influential name in this country and the mere fact that he is restricted in Lodwar does not seem to reduce that influence. I think, Sir, that the continued restrictions of such men when the majority of their people, and I say the majority of their people—I am ready to accept any challenge from any Minister, including the Minister for

[Dr. Kioko]
African Affairs, Mr. Speaker—because they say that he is not wanted by his people and yet we know that the majority of the African people have expressed overtly their faith and their love for him. And if so, who then does not want him? Does it mean that the majority of the African people because they believe in Jomo Kenyatta are subversive? Does it mean that the majority of the Africans because they want him back are violently inclined? I do not believe that any person who has lived in our society long enough—not just during the Emergency, after all, the Emergency has played only a small part in the history of this country—I do not believe it is correct to judge our people on the basis of what has happened during one era of a relatively longer history. And I am saying, therefore, that if we are going to be judged or if these people are going to be judged only on the basis of what happened during those disturbed years, we will be making a great mistake. It is as big a mistake, as a mistake that I have seen in one of the regulations connected—again in the Public Safety Regulations—connected with the Bill that was passed yesterday of saying a particular tribe will have particular regulations while at the same time we are told: "This question of security is non-racial and does not refer to any race but is simply a matter of any person who might jeopardize the peace of this country." I believe, therefore, as I said yesterday, that we are doing the wrong thing. We are creating the wrong atmosphere in this country while we could be creating the atmosphere of confidence by removing the Emergency and have everybody happy. We are telling them, "Well, we will let you off with these hardships but we still do not think that you can be fully trusted and therefore suspicion is maintained." I would have thought that this time, this week, this month, when the Kenya Government has agreed to end the Emergency, it should have been the one week of rejoicing, the one week in which we could again close the ranks. But Government continues to remove itself from the feelings of the majority of the people by turning around and saying: "Yes, you get that, but I am spoiling

that by putting a little poison in the cake that I have given you."

Yesterday it was said that we have looked only at the wrong side of this issue. But I would like to make it very clear, Mr. Speaker, that our opposition to this Bill and the Bill that was passed yesterday is not based on the fear that we might be the victims of its application. It is not based on the idea that only a person who suspects himself is likely to suffer from this, because, Sir, I do not think we are people who are afraid of going to gaol or even of going to detention camps for that matter but we are saying this because we know that this kind of a measure and the reaction of my people to this kind of a Bill is going to be one which is not going to be conducive to the very type of an atmosphere and the very type of conditions we want to see prevail in this country. We are not saying this because we are afraid of the consequences of this to our persons. That, Sir, we as nationalists have accepted—the sacrifice that goes with this kind of thing. But we are saying that this measure, like the other measures, are themselves self-defeating and they aggravate that which you want to see in this country. And therefore, I know yesterday I requested for a withdrawal and I did not get it. Once more I shall not give up, I shall request the Kenya Government to withdraw this one and say: "Look, we shall take a chance." They have already told us that they are taking a great chance by announcing that they are going to remove the Emergency. But, Sir, I would say once more, many of these men whom I happen to know in person, whom I knew when I was young and some of whom I know today, I do not believe that these men are harbouring in their minds today a plan to upset this country. I cannot believe that and I know also that the majority of the people in this country and the African community particularly is not interested in another Emergency. If anybody is against the recurrence of the Emergency in this country, I think the African people are, more perhaps than any other people because they have suffered a lot during the Emergency. And I believe, therefore, that even any of these men that Government suspects, if they actually came and told the people to go

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back to the Aberdares with guns and so on, I am sure the response would be very discouraging to them. And that is why, Sir, I think the Bill is unnecessary. I think the Bill is unnecessarily punitive to some people who, really have no violent tendencies and I think that it is also self-defeating.

One last word, Mr. Speaker, is that the power to detain a man without trial can be a very dangerous weapon in the hands of any human Government—and we are human beings. We have known in history where a Government has been particularly—and not our Government this time—but where some Government has been particularly irritated by the opposition of somebody and they knew that that would not stand in a court of law and they have resorted to the power of detaining without trial simply to get him "out of their skin", as it were. And, Sir, the power to detain without trial is a dangerous weapon that can only be justified at a time of war. But now Kenya is at a time of peace. If there was no peace in Kenya I am sure, we would not be hearing these promises about the Emergency being ended. And therefore those men who have been detained without trial with the excuse that there was violence going on today ought to be out and immediately out. Otherwise, specific charges should be made to them or else we shall say that our Government is afraid of the opposition by these people and knows that their case will not stand up in any court of law and therefore we have decided: "Let us use this more convenient method of getting him out of society without trial in order to be free from his opposition."

Sir, as I say, history has shown in other Governments that this is a dangerous weapon, a weapon of giving a Government whether it is the Government that we shall have when our freedom comes—or whether it is the Government that is colonial, like the one we have today, it is a dangerous weapon in the hands of any Government, democratic or otherwise, nationalist or colonial, and I would say that it is time that we corrected it, it is time that we took this dangerous weapon from the hands of our Government—our present

Government—and say that the man who is now in detention or who is restricted to gaol without trial, now that he has been restored in Kenya should come right out and no longer should be detained.

I therefore, Mr. Speaker, beg the Government to withdraw this Bill and otherwise I oppose the Motion that introduced it to this House.

MR. MAIT: Mr. Speaker, Sir, the two Bills—the one before the House and the one that was passed yesterday, have killed all expectation, particularly in Central Province, regarding the ending of the Emergency. The general feeling is that we have been given a thing with one hand and at the same time it is taken away from us, because the feelings we associated in the Central Province with the ending of the Emergency were not only the removal of passbooks, curfews and all the other detentions, but the removal of a sense of fear. And, Sir, because of these two Bills the sense of fear remains. And in the minds of people there is a beginning of what I might call a "cold Emergency" between the people in the Central Province and in Kenya in general and our Government here.

Mr. Speaker, Sir, what is our Government so afraid of? The few people still detained or the majority in the countryside today? Our Government here may give us all kinds of assurances as to how useful these extra powers are going to be but I do not know any method of giving comfort to a troubled heart and I would like the Government to take these remarks seriously because I feel they hope that by having these extra powers and making the people remain afraid of something, then all will be all right. These are only two of the after-effects of the Emergency. We have had other things, like villages, we have had systems of communal labour and many changes have taken place. Now, what have Government done to remedy the evils arising from the other after-effects of the Emergency like the villages, the very poor health, the great poverty? And they hope that there can be happiness and that the extra powers Government will take upon itself are going to be a supplement as it seems to me to be their major defence at all against anything that might happen in

[Mr. Mate] the future. And I feel that these laws given to the Government are not going to help at all.

I would like to ask Government a question on these two kinds of people, the detained and the restricted persons. I think with your permission, Mr. Speaker, I will mention names. I will mention the name of a certain chief Muruatetu from Embu who is now restricted or detained—I do not know which—at Nkubu in Meru. He is living there with his family. His children come and visit him and his friends. What bad influence is he in Embu that he is not in Meru? Who advises our Government in putting such an old man there and not in his *shamba*, where he should be doing consolidation rather than putting him among the Meru people who are just neighbours to the Embu people in the hope that whatever influence he may have will not be so bad as in Meru. I am not saying we do not like him but we pity him and the Government here who are ill-advised and take such very shallow measures in trying to keep the Embu country clean.

To give an example there is Mr. J. S. Gichuru at Kilimambogo. He cannot come and live at Dagoretti. Who advises this Government that Mr. J. S. Gichuru in Thika is worse than Mr. J. S. Gichuru at Dagoretti? If, for example, the influence of these men in their own home is so bad, they show that the Government local leaders and people who advise Government are so weak and these are the people who matter—the local people there do not matter. And I would appeal to this Government to take these particular cases or even that of, for instance, Mr. F. Odede who is restricted somewhere near Isiolo. If he can live with other people freely, why should he be unable to visit his family and visit his people and his home? I will take another example, people like the Kenya chief Koinange. Is Kenya so devoid of leaders, chiefs, district officers, everybody, that they are afraid of a name or one man? Is this Government suggesting that the mere restriction of such individuals and others in certain other parts of the country is the only cure to the problem we have in mind? At the same time, I feel our Government

should realize that politics will live with us. If it is the activity of these individuals as far as the *Mau Mau* is concerned—their freedom—we have been told that these societies have died out. What are they afraid of then? The Government should realize that if they are afraid of the political influence, perhaps, of these individuals, they are too late. Other people have been born, they will be born, and they are going to be great names in the history of Central Province. We know of names like Harry Thuku who was a great figure in the '20s. He is an old man now, so I would appeal to this Government to look back again and not hope that by having some laws put in a book somewhere they are going to put everything right in the country. The extra powers have no power over hungry men or a discontented population who may feel they have no way at all except in freeing themselves. And here, Sir, on the question of people detained within Central Province I do not see the logic at all in our Government in having Muruatetu in Meru, J. S. Gichuru in Thika, and not in Dagoretti, or people like F. Odede at Isiolo and not in Nyanza or Chief Koinange at Kabarnet and not in Kiambu. There are many other cases of such restrictions and I feel our Government are being like children who play hide and seek. People go to visit and see these people but they cannot come and see their families. And I feel our Government should reconsider this matter most seriously and give these people their rightful freedom.

Secondly, take the question of people who are now detained and who we are told are going to go through the normal processes of rehabilitation. Is the Government telling us that these new laws are only temporary and will apply only as long as there are people to be rehabilitated? Are they for the sake of the few who are detained or is it for fear of the millions in Central Province today. I am being rather particular because most of these things apply to Central Province and I suppose this is the area where Government hoped that the news of the end of the Emergency would bring joy because the passbooks would go and many other restrictions.

Sir, we see in these two measures what we call the end of the Emergency with

[Mr. Mate] strings tied to it and we feel that we cannot altogether trust Government to use these laws to the best of their discretion because we have seen it happen whenever hoping for such a thing like this that Government have suggested and I would like the Minister when he replies to tell us whether these laws are only temporary so long as we have got these particular individuals detained or restricted and as soon as they are given a complete release—when they come back or are released—then the laws will not be required. If that is not the case, then I would say this is one of the bad gifts that the Emergency has given to Kenya and like many other measures that it has bred so far. At the same time, Mr. Speaker, had Kenya been a place of angels of all races, would we ever need such laws? Who are these laws going to affect most? I guess the African population. When yesterday we talked about meetings it is the African politicians who are more restricted and that is the reason why we feel apprehensive about these new laws. And, Sir, I would suggest to the Government here that the whole question of the ending of the Emergency and the Bill before the House today should be viewed as a human problem. Our Government should look at history elsewhere and not hope that that which happened yesterday is that which will happen tomorrow. I believe myself that the political change will come because these changes have been mostly political—they have been mixed up with other things but they have been mostly political. Now, I feel for proper political growth in a country, the citizens should be free from fear, arbitrary fear, of the Government and their officers, and these two laws go to give the people what I might describe as a feeling of chilled welcome of the end of the Emergency and a kind of cold Emergency or cold war between the citizens and the Government. And in this atmosphere, Mr. Speaker, I feel that our Government are trusting more not on the good will or the bitter lesson that the people have learned through the Emergency but rather on prejudice and I do not feel that a Government who looks upon a country as a country where only evil can happen and no good at all are a Government worth, as they

call it, their salt. I would appeal particularly to the Minister for Legal Affairs and his colleagues the Minister for African Affairs and the Chief Secretary to look at these laws again and see whether like some of the other good things of the Emergency they are going to bring the effect that is required, a sense of happiness in the country, whether the necessary reforms agricultural, economic, political—are not the real essences of having a state of things in the country and among the people who are detained or who are restricted in the Central Province and for me it is a much more immediate problem because these are my fellow citizens. They are not outsiders. Would Government give a most definite assurance that their aim is definitely to do all they can to make sure these people come back to their localities? Are Government suggesting that should these people come back to their homes they are going to be the most important figures above the African district council, above the chief, above the citizens there today? I cannot understand this Government who are afraid of these individuals. I suppose Government forget that each person is on the individual taxpayer. Are they suggesting they will be so powerful that the police there, the Special Branch, the Criminal Investigation Department, will never be able to trace their activities or the other citizens cannot even look out for any bad man or any bad influence. Mr. Speaker, I feel a very important factor is involved in this whole thing and what is something more is the fate of these particular individuals finally. And I would appeal to our Government not to rely so much on having these laws in reserve somewhere but to see what other ways are there of making people feel happy together and it would be a shame to think that these particular individuals—I know many, for example, from the Meru District who are at Hola, I am very sorry, Mr. Speaker, at Galole—now, some of these individuals are quite harmless. I have met individuals who visited everywhere and they say, "These chaps, there is nothing wrong with them." Now, is Government so afraid of these people that the chiefs and their supporters and everybody else are so useless?

Mr. Speaker, the Chief Secretary said that he remembered a time when

[Mr. Mate] Government required such extra powers. They have got more extra powers today. They have got a better Special Branch, a better Criminal Investigation Department, a better general police force. Why should they be afraid of an individual who comes with many other ex-detainees who have just come back? I suggest that it is Government who should look at their ways of doing things, look at themselves again and their leadership of this country and not penalize these individuals by their unwillingness to try and face the issue. I would like to ask the Minister for Legal Affairs when he replies specifically to explain why the particular individuals I mentioned should be so restricted. It is very ridiculous. And, Mr. Speaker, it is with the greatest difficulty that I would support these laws at this time today and I should not be taken as saying that I support disorder until that time but I cannot accept that way of ending things where the whole thing is tied up with strings and difficulties and among our people they are going to be happy for a month and then later on they will say, "Oh, but this is not what we expected." I hope Government will take these remarks with some sincerity.

I beg to oppose.

MR. MUOYA: Mr. Speaker, Sir, I will be very brief. I have only one or two points to make.

Seriously, we are very concerned about this legislation, and my colleagues have made out, I think, a very strong case to the Government to reconsider the situation. Throughout the State of Emergency we have expressed great concern over things like collective punishment, detention or restriction without trial and so on. I do hope the Government will remember that we are dealing here with some cases where people have, in fact, been in detention for some seven, six or five years. And in that period the only excuse under which they were held was the State of Emergency, and it was argued that in the situation in which the country was it was not possible to let them go back to their homes. The hope that was built among the people, not only the people outside, but also the people in detention and under restriction was that, with the end of the Emergency,

they, too, would be free. The Government may argue that it had to have powers that extend beyond the actual State of Emergency in order to deal with thousands of people who have yet to come through rehabilitation, but there are various categories of people to be taken care of here. There are those who have passed through rehabilitation. There are those who are not being rehabilitated, who have never in the last six years been-rehabilitated, and whom it is not even hoped to rehabilitate. And the question is for how long are they to remain under detention or restriction? Is it until they are able to promise that they are going to be good boys? If so, the chances are very remote. These people are grown up men who have their own views, and they are entitled to have those views. They may not agree with the Government, and there is no reason why we should agree with the Government if we do not feel that what the Government does is right, or if we do not feel, indeed, that this is the sort of Government we should have in this country. Indeed, most of us tolerate this Government only for the time being, hoping that it will be possible to replace it with a better Government more representative and thoughtful of the feelings and views of our people. It is our hope that we can replace it as soon as possible.

There are people outside detention camps-like ourselves who believe in this most sincerely, and very strongly, and we believe we are entitled to hold those views. We believe, likewise, that those African leaders who are now in detention or under restriction are entitled to say to the Government, "No, thank you, we do not like your system of government, and we are not going to promise to be good boys. We reserve our right to oppose you and to criticize very vigorously." Now, Sir, the fact that a person does not promise to be a good boy does not mean he is a potential criminal or that he is going to indulge in subversive activities. It does not mean that he is going to organize an uprising either. And, indeed, if this Government is so weak that the few hundred people in detention camps become such a big potential source of trouble when they come back, then I say this is one good reason why this Government should be

[Mr. Mboya] replaced immediately. The fact that this Government has no confidence in itself—has not confidence at all in itself—and fears so considerably that the return of these people will upset everything they want to do, in my view, means this Government is not fit to govern, and should be replaced.

Mr. Speaker, we want to emphasize here that detention without trial of a person is not only of itself an injustice, it is a denial of everything we are talking of here, and I cannot any longer see any reason why this Government should lay claim to what the British have always tried to impress on us, namely that they are here until we are ready to govern ourselves. In other words that they are teaching us how to do it in future on our own. Is it being suggested seriously that we are being actually asked to accept this as part of this training. In other words, to detain people without trial in our future Government. Mr. Speaker, if that were suggested, then I would say it is time we governed ourselves because we might do it better.

Mr. Speaker, I am worried referring to this specific legislation itself. I am worried about the fact that although mention is made about tribunals and periodical or regular reviews of the cases of those in detention and under restriction, I am worried because I did not hear, and I may be corrected here if I am wrong, whether in the case of these tribunals and reviews the person in detention or restriction may, if he so wishes ask to be represented by an advocate. Is he allowed, I would like to know, to be represented by counsel. Now I know that during the Emergency some tribunal or advisory boards existed and at that time they were not allowed to be represented by counsel. The most they were allowed was to have some help in the preparation of their cases. It was not even clear then whether they could have independent, impartial advocates to help in the preparation of documents for their case. It would also be interesting to know if they are allowed to prepare their case, whether they are informed beforehand what charges there are against them. It is no use asking a person to appear before a tribunal or to be subjected to any enquiry if he does not actually know the charges against him, and the wit-

nesses in respect of these charges. If the Government has any charges against these people, and if these charges are so flimsy that they would not stand in a court of law, then it is my submission that Government has no business holding them. If, on the other hand, there is evidence and charges can be substantiated, then I submit that especially in the present circumstances when it has been possible even to accept people who are known to have committed crimes to come back into society, it is now time that persons detained without trial were brought before a court of law. The Government argued previously that because of the situation existing during the height of the Emergency it was not possible to bring them before courts of law because witnesses were intimidated and could not appear, because people who were willing to give evidence, were no longer willing to come forward once the charges were prepared. I submit, Sir, that not only from what we have ourselves seen, but what the Government has told us, it is possible to bring these people before courts and have these witnesses come forward. Now what sort of witness would this be, if he is not prepared to come and stand before a court of law and actually put forward whatever piece of evidence he has. And, Sir, what sort of justice would it be wherein a person stands guilty merely because of some wretched witness who says he has done something, but is not prepared to stand up and say so in a court of law. If these people are not prepared to stand up, I presume they have not got much evidence, and these people have every right to say they are innocent, and unless the Government can prove to the contrary we believe, and we have every reason to believe, because they have not given us any reason not to believe, that they are innocent and that they are wrongfully detained and wrongfully restricted, and in fact, it amounts to being jailed wrongfully.

The other point, Sir, that I wish to make is in respect of the conditions in which these people who will be detained or restricted will live. Now, Sir, we have in the last few months had the experience of the conditions under which Jomo Kenyatta and the others have been restricted at Lodwar, and I am particularly concerned about whether or not

[Mr. ole Tipis] hands. Let us make no mistake about it, since the Deportation of Persons Ordinance was introduced into this country, we have deported quite a number of persons, some of them are still restricted even today, but has that helped us to solve the situation or the problems of this country?

This surely has not for one moment, in my way of thinking, Mr. Speaker, solved the situation. Now, if I may touch on one point, one clause of this Bill which is 2 (ii), where it reads "To such person is for the time being outside the Colony", and then it continues that if such persons enter the Colony it would be necessary for securing the public safety and maintenance of public order to exercise control over such persons. Of course that was mentioned previously, but I would like to hear from the Minister when he comes to reply whether such a person who is at present living outside this country, who was forced by circumstances beyond his own control to run away from this country and has lived for over seven years peacefully in a good democratic country, peacefully, without any trouble, whether the Kenya Government is the only Government in the world which is concerned for the security of public safety and maintenance of public order.

Now, such a person, if you drive a person from his home, from his country of origin for ever, that he should never return, surely you are making an enemy with that person, and no matter how good your intentions are, he will always think that he has been very unfairly treated. Why not let them come back? Watch them, if they go wrong, then of course if I was in the Government I would encourage such people to come back and then I would keep a close watch on them. If they misbehaved then I know that they are quite close to me and then I would put them in. But now you say you should not come to your homes for ever. That is quite illogical, why should this Government not ask them to come and rehabilitate them? Of course a lot of emphasis has been laid on this question of rehabilitation. Not that I believe that rehabilitation has no effect on the human mind, but of course I have always said that even in some Government quarters, since they believe

so much in the rehabilitation, I think they should have a good go at some of the Government advisers, people who advise the Government on such measures, such punitive measures, because I do not really see why a man should be debarred from coming back to his own children for ever. This is quite inhuman, Mr. Speaker. If he comes he commits a crime, then the law of the land will effectively be applied to him.

Now, the other clause which has also been touched upon, which I think I am right also in saying that as far as the conditions of the relatives of any restricted or detained person are concerned, I think it is the duty and the responsibility of the Government at least to bring these children up in a decent way, so that these children will have an influence on the mother or the father who is restricted, that he might have gone wrong somewhere. But when you leave them just like that, or say "All right, you take them to a place like Lodwar where no school facilities exist, where the man detained on a subsistence allowances which can hardly suffice his personal needs, surely you are punishing an innocent child, an innocent woman and that, in my way of thinking, is not fair at all. I should like also to hear as to why there is all this discrepancy between the subsistence allowance paid to any African detained in this country or restricted in this country to that of an African detained or restricted in a country such as Uganda. Are they so different from us? All the same they are restricted, they are detained. But why should their conditions be better than those of the Africans detained in this country?

The other thing we must also bear in mind is that some of these persons who are detained or restricted are detained or restricted without trial, and as such it is only fair that if in the eyes of the Government their activities have been too anti-Government—and since the Government did not have the courage to bring them before the court of law and get them convicted, then it is only fair that they should not be disposed to such a bad climate, a climate like Lodwar where, I think, most people in this House would not like to be. Why not detain them and restrict them in a healthy climate which will help, their

[Mr. ole Tipis] mentality to gain good momentum, because when you take them into the boiling sun, then it burns their brains more, and they think that the Government is their enemy. Get them to a cool climate, if you are afraid of them having close contact, well you ask the hon. Chief Secretary to hand to me and I will take them to a better climate somewhere in the bush, healthy and I would let nobody enter there.

Mr. Speaker, I do not want to repeat anything said by the previous speakers and I can only conclude by asking once more, we have asked, we have asked, we will continue to ask until this Government at least modifies its attitude or until very soon we take over this Government and show them how best we can run this country. So I would ask the Government at least to try to go into this Bill again, withdraw it for the time being and try to if necessary, introduce something later if it is at all necessary. We want to get rid of the detained persons, people already detained and restricted and return them to their normal lives. I do not see any danger because we do not want to increase the population of detained and restricted persons, we want to reduce it and if the Government believes in its rehabilitation effort, then they should know by now that the detention camps and these restricted areas are bound to go out, why introduce this piece of legislation at this stage when we want to return to normal conditions?

With these few words, Mr. Speaker, Sir, I beg to oppose.

MR. BLUNDELL: Mr. Speaker, without wishing to repeat what has already been said to this Council, I rise to support the Bill which the hon. Members opposite have introduced to this Chamber.

I would like to remind this hon. Council that all over this country there are many inarticulate people who are thoroughly supporting the attitude of this Government in this matter, and they are people whose relatives, homes and happiness were destroyed by the terrors which the men who are detained and which this Bill seeks to cover raised in this country. Not a single Member speak-

ing from this side of the Council has supported the Government in its proper attitude in maintaining those people who suffered so tremendously from the activities or from the pressures that the men who are detained created. The Government would completely be abrogating its responsibilities if they listened and acted for one moment on many of the speeches on my left.

Many erroneous statements have been made, Mr. Speaker. We have examples in this country of men who, having been detained in the past because of the riotous imagination of their minds have returned over a period of time to bring influence and reason to this country. I am thinking in particular of Mr. Harry Thuku who I think I am quite correct in saying suffered a period of detention and is now one of the most respected citizens in this country.

It is absolutely erroneous to try to hoodwink this Council that automatically therefore an individual who is detained will become a burdening issue for ever in the minds of the people from whom he was removed.

Again, Sir, I was astonished, and I would ask the hon. Members opposite to completely discard it in their thoughts—I was astonished to hear that if hon. Members on this side of the Council were able to remove hon. Members on the other side of the Council and become the Government of this country, all in the garden would be lovely and there would be no restriction or detention bills of this nature. I would merely ask hon. Members to look across to the Western side of this continent to the independent and free territory of Ghana where they will find that the hon. Members would not be moaning about having been detained because they had already created riots, disturbances and murder—they would be detained long before they could even do it under a Bill called the Preventive Detention Act, and I would have preferred hon. Members on this side of this Council not to have attempted to hoodwink the Government into the belief that if the hon. Members opposite were removed, automatically the hon. Members on this side of the Council would be far more humane, righteous Christians and conscious of human dignity than hon. Members opposite.

[Mr. Blundell]

I would put forcibly to this Council that I am satisfied that the Government will not abuse this measure. I believe that the Government has a perfect right, and we should unhesitatingly support it, in introducing the principles of this Bill which are the continuing maintenance in detention of men who the Government has reason to believe would disrupt this country if they were released. No Government worth its salt would depart from that attitude if it really wished to hold the security and responsibility for the peoples in its hands, and I am certain our Government will not.

Lastly—Mr. Speaker, I only want to say this. When the hon. Member replies—while accepting the principles of this Bill I would like to say this—I believe it is essential that the individual under detention should be constantly under review—that is the reasons for his detention should be constantly under review by the Government. We do not want the people of this country who have suffered detention to be, as it were, forgotten under the detention system. I think it would help the Council if the hon. Minister opposite, when he replies, gave us an assurance that the Government will indeed operate this measure as humanely as is possible and will constantly keep under review the individual progress of every man detained.

Finally, Sir, surely the greatest justification for this measure is the fact that the Government started with something like 77,000 people in detention and it has reduced those to under 200. If that was not an indication of the Government's good faith and real intention to carry out the principles which Great Britain has tried to impart here, then I would ask hon. Members what better or further proof could we have of the Government's faith?

Sir, I would like to end by unhesitatingly telling the Government that a number of us on this side of the Council and a number of citizens in the country unequivocally support this measure.

MR. KHAMISI: Mr. Speaker, although I do not like having to intervene in this debate, I would like to say one or two words in opposition to the Bill before the Council.

In the first place, Sir, I would like to denounce the statements made by the previous speaker who claims to be the champion of those he calls "inarticulate people" who we do not know but he himself knows and says that they will also support the measure being taken by the Government.

I would say, Sir, that we on this side of the Council do represent the majority of the people in the country. We know what our people want and we state what our people have asked us to say to this Council and we categorically oppose this Bill because we feel that the Government is not sincere and has not made sufficient provisions in this Bill as it is at present.

MR. SPEAKER: Sir, long before the Emergency we had in this country a Bill or an Ordinance for detaining people because detentions did not begin with the Emergency. As long ago as 1920 we know that Mr. Harry Thuku was detained and after that many other people were sent into exile in Masai and detained there. Now, these provisions which are mentioned in this Bill are called Special Provisions which have arisen directly, I believe, from regulations which existed during the Emergency. Now, Sir, I ask this Council and you, Sir, whether there is any reason—any logical reason why, when we are about to call off the Emergency that we should introduce Special Provisions instead of returning to the old Ordinance which empowered the Government to detain and restrict anybody who was against the Government.

AN HON. MEMBER: Question!

MR. KHAMISI: You may question it, but if the Government did not have these powers, under what law did it detain Harry Thuku, and under what law did it detain Mr. Makau Singh? If the Government had no law, then how did it detain these people? A law must have existed then, and we believe that it still exists and if we are back to normal then we do not need these special provisions.

One thing that is very impertinent about this law is that we have been told that the people have passed through the pipeline during their period of rehabilitation and after passing through the

[Mr. Khamisi]

wrong and immoral. I believe, Sir, that if a person is guilty it is that person and not his family or his children or his dependants who should be punished. If this Bill becomes law it means that we are accepting a Code of Regulations which takes no consideration of the affairs of human beings.

I am quite sure, Sir, that despite what the champion of the inarticulate people claims, this piece of legislation is one of the worst to have been introduced into this country, and we, as leaders of the African people and being the mouth-piece of the people and who live with them and amongst them—not like those people who know nothing at all about them and yet claim to represent them—we represent these people and we oppose this Bill, and when we oppose this Bill it is the whole African community who oppose this Bill, and we have therefore to register our very strong opposition to this Bill.

With those few words I oppose the Bill now before the Council.

THE SPEAKER (Sir Ferdinand Caven-dish-Bentinck): May I once again draw the attention of hon. Members to Standing Order No. 71 which deals with tedious repetition.

MR. MUMBI: Mr. Speaker, my concern is over a small section of the Bill before us—section 2 (1)—the paragraph related to rehabilitation. I would like to speak of this subsection of section 2 in conjunction with the proviso on page 1013 at the bottom where it says that in the cases of the restricted or detained person will be reviewed at least every 12 months.

Mr. Speaker, much has been said by my colleagues and I do not want to repeat what the Council by repeating what has already been said. The only thing I would like the Minister to explain to us when he replies is what he means by (f) being genuinely and permanently renounced from being an adherent to an unlawful society. The reason, Sir, I would like his assurance is this—I have on record certain people in the Machakos District who went through all the processes of rehabilitation and were released and sent back to their respective locations. These persons belong to the Wamunya Location of Machkos. Their names are: Koti s/o Numba, Mwangei s/o Ndingo and Kitothya s/o Muthuku.

Another thing which is very important is the person's home. The Government does not seem to be at all human in this respect. It does not seem to think of a person as a human being or as a family man. The Government seems to think of a person as an instrument or as a tree which can be removed to one place and then removed from there and put in another place without caring about his health or his family commitments. If the Government does act like that, it does seem to me and most of us on this side that the Government is not restricting and detaining just one person, but they are in actual fact restricting and detaining the whole of that man's family. He has no means of educating his children and they are punishing his wife and his dependants which is quite

[Mr. Muimi]

Now, these persons were released from detention in February, 1958. They have been mixing with the ordinary people in the location ever since they were released from detention. I met them at the big trading centre in that location and they asked me what had happened to their case as it had never been reviewed by the authorities as provided for under section 15, Chapter 45 of the Laws of Kenya.

Would not many people, when this Bill is introduced, fall into similar difficulties as these people have experienced? Have their cases been reviewed in accordance with the provisions of section 3 (1) of the Bill before us? If they have, what has the Government done to see that these people who have gone through all the processes required for rehabilitation are now free people and can move about in any part of the country.

Mr. Speaker, I listened very carefully when the Minister wound up the Bill before the Council yesterday and he said this: He said that the Bill before the Council yesterday was an "enabling one" and today, Sir, when he introduced this Bill before us, he also said that this was an "enabling" Bill. I would like the Minister to make the statement "enabling Bill" much clearer to us because as he said yesterday, if it is an enabling bill, and God forbid, it may not be necessary to use it. But here this Bill which is now before us is already taking effect when it becomes law on certain people, and therefore—

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) left the Chair]

[Mr. Deputy Speaker (Mr. Bechuard) took the Chair]

it is not an "enabling Bill".

I feel, Mr. Deputy Speaker, that the Minister should very seriously consider the methods and the means of judging the persons he so terms "rehabilitated" because I know, for instance, that certain Akamba were detained during the Emergency, and I will mention just two: Joseph Muasa Nihula of the Iveti Location and David Kali of the Kilungu Location, both in Machakos. Now, these persons have never been proven in any

court of law to have been implicated in the *Mau Mau* uprising. They have never been brought before any court of law at all. Compare these two people and many others of their calibre with the people who have enjoyed, under the Act of Grace, release although they have on record murder—then I feel Mr. Deputy Speaker that the Government should consider very seriously the difference between these people who have nothing to confess and who have not been proven to have been implicated or to have on record any such cases as murder cases with those whom it was announced the other day that under the Act of Grace, although they had committed certain murders, they may forget whatever acts they had done during the Emergency and be free people. I think that these people I have mentioned have more right to be free than any of those people who have been freed under the Act of Grace.

Mr. Deputy Speaker, I feel that there is something very serious for the Government to consider in this Bill and I beg to oppose it.

MR. NYAGAH: Mr. Deputy Speaker, I should like to say this. I think the Government sitting across there in 1960 should consider itself very lucky in that it has a strong opposition composed of people living deep in the country with the people who have supported the Government very loyally and the people who have also been through the pipeline in the detention camps. We live with these people; we know them; we hear what they say more than you do.

The Government, without even knowing it—through pressure sometimes—through Colonial Office pressure sometimes have emptied the detention camps from 77,000 detainees who were there to the few thousand still left in the camps. But we, the representatives of the people, who come from where the 70,000-odd have gone back to, have got this to say to the Government:

It is true that to some, rehabilitation methods have been effective, but to others the Government cannot claim that they have been wholly successful. We can only hope that by rehabilitating these people properly they will settle down with the people with whom they now live. It is true that the Government

[Mr. Nyagah]

have gone through several processes or several modifications to the rehabilitation methods from the time it was first started—rehabilitating the detainees. First of all, it was started by imprisoning people for several years. Some of those people have come out of those prisons and have passed through the pipeline to find themselves handicapped even though they have come back to normal life, in that their sentences require them to report to the Police every month for so many years. I know of some people who have to go back to their reserves at the end of each month from Nairobi just to report, and I do not feel that these people are affected by the Act of Grace.

Then the Government's methods of rehabilitation went on evolving and improving, but there is still room for improvement. There is no better method of rehabilitation than sending some people, particularly the family people back to live with their people and their families. Names have been mentioned, and I do not want to repeat them all. Some people who are in detention camps might perhaps be labelled "irreconcilables". Some of these are people even when they were children in Standard IV and even all the way through secondary schools were just different people and it is not because of the Emergency or *Mau Mau* that they are like that. This does not seem to me to be necessary. It seems to me that it would have been good if the Government had declared a general amnesty and decided in its place to publish all the causes of the unrest which brought about the last State of Emergency. I know that the Chief Secretary said that it would be done soon, but the sooner it is done the better, and then following that we should have the methods of development and remedying these causes that coupled with the family rehabilitation of these people living with good people around them, will do more good than keeping them still under 2 (a) and 2 (b), in the detention camps.

Then the Government's methods of rehabilitation went on evolving and improving, but there is still room for improvement. There is no better method of rehabilitation than sending some people, particularly the family people back to live with their people and their families. Names have been mentioned, and I do not want to repeat them all. Some people who are in detention camps might perhaps be labelled "irreconcilables". Some of these are people even when they were children in Standard IV and even all the way through secondary schools were just different people and it is not because of the Emergency or *Mau Mau* that they are like that. This does not seem to me to be necessary. It seems to me that it would have been good if the Government had declared a general amnesty and decided in its place to publish all the causes of the unrest which brought about the last State of Emergency. I know that the Chief Secretary said that it would be done soon, but the sooner it is done the better, and then following that we should have the methods of development and remedying these causes that coupled with the family rehabilitation of these people living with good people around them, will do more good than keeping them still under 2 (a) and 2 (b), in the detention camps.

As I said yesterday, Mr. Deputy Speaker, it was difficult for me to support or not to support the Bill yesterday. We have got to tell the Government our fears. In the Bill yesterday section 7 dealt with the way the powers were going to be executed. I find that I have got to say the same for section 4 of this Bill. It is not that I hate the people to be given these powers, but it is from the unfortunate experiences of the few at the hands of those privileged to administer the law that I have got again to tell the Government to be very careful as to whom, if this is at all passed, they give their authority to see the administration of the law carried out.

Again I ask the Government whether we could not consider a declaration of a state of general amnesty to all the people referred to in sections 2 (a), (b) and (c),

deteriorated to where it got to. It is our duty as the leaders of our people in this country to see that law and order is maintained, stability achieved and progress made. Those of us who have had the unfortunate experience of seeing the active life of the Emergency fighting, the barbarity of human beings, from both sides, would never dream and would never like to see such things happening again in this country; and I think I could assure the Government that as long as some of us have any influence we will do our best to see that such things do not happen again, and in return I would ask the Government to listen after a barrage of criticism like this, and go back instead of having to rush through a Bill like this; they should examine everything and produce something that would bring stability and peace in this country.

If I were a scholar I would be able to quote a speech from "The Merchant of Venice" about mercy. It is time the Government has got to exercise restrained mercy on some of these people for whom provisions 2 (b) and (c) were to apply. The Government has got more help than it had in 1952. You have got the loyalists and you have got even greater support from some of the rehabilitated men who have seen how futile it is to have lived for so many years without reward and we have got efficient systems of police forces, perhaps more efficient than you had in 1952. Sometimes it is worth taking a risk and see what happens.

As I said yesterday, Mr. Deputy Speaker, it was difficult for me to support or not to support the Bill yesterday. We have got to tell the Government our fears. In the Bill yesterday section 7 dealt with the way the powers were going to be executed. I find that I have got to say the same for section 4 of this Bill. It is not that I hate the people to be given these powers, but it is from the unfortunate experiences of the few at the hands of those privileged to administer the law that I have got again to tell the Government to be very careful as to whom, if this is at all passed, they give their authority to see the administration of the law carried out.

Again I ask the Government whether we could not consider a declaration of a state of general amnesty to all the people referred to in sections 2 (a), (b) and (c),

[Mr. Nyagah] and also to publish as soon as possible the causes of the Emergency and the remedial proposals which they envisage.

With these remarks, Mr. Deputy Speaker, I make the comments.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Deputy Speaker, I feel that there has been considerable misunderstanding as to the intentions of the Ordinance or the Bill that we are debating and the regulations and I am going to leave my hon. and learned friend the Minister for Legal Affairs to deal with that and I am merely going to touch on rehabilitation briefly because, Mr. Deputy-Speaker, it has been the subject of considerable debate very often in this House over a long period of years; and I am sorry perhaps that I have got up before my hon. friend the Member for Central Nyanza because I am sure he would have been most enlightened as to what rehabilitation meant.

Sir, may I begin by saying that the way is open to every detainee to come out of detention and go back to his home. May I repeat what has been said very often in this House and elsewhere that the Government does not regard any detainee as irreconcilable; and it lies with the detainees themselves, Sir, to show positively that they have renounced any allegiance to *Mau Mau* or to *K.K.M.* and that they are prepared to be law abiding citizens in the future. That is all they have got to do and they are then on their way back to their homes.

It was suggested, Sir, in the course of debate, I think by the hon. Member for Nairobi Area, that rehabilitation was in effect a species of political re-education. That is not so at all, Sir, and it never has been. We are entirely concerned with re-creating the moral standards in persons who have sunk to the lowest possible abyss of humanity.

Sir, there have been pleas for the return of a number of persons in restriction. Koinage has been mentioned and Odede, Achieng, Muruatetu, Chokwe and Mwinga Chobwe. Now, Sir, part of the duty that is assigned to this Special Commissioner is in conjunction with other authorities, to review the cases of all these persons. He is in the process of doing so. We have already considered,

for example, the question of Muruatetu who is now in Meru, and we believe that he can now be safely returned to his district of Embu. I am glad the hon. Members are prepared to applaud that, at any rate, because I was going on to say that we had reviewed the cases of some others.

Mr. Deputy Speaker, we have also reviewed the case of a very old friend of the hon. gentleman the Member for Coast Rural, Mwinga Chobwe. We have decided, in view of the circumstances in which he now finds himself and because we are satisfied that he is no longer a menace to security or to peace and good order, that he is permitted to go into Mombasa and to live there. We also are considering other cases but I would not, certainly, Sir, go so far in this House as to say that we will be able to extend such clemency to the other cases that I have mentioned. That remains to be seen.

Now, Sir, I think it was the hon. gentleman the Member for Central Province South who talked of Hola, or Galole as it is now called, and said that normal people there might become abnormal and he felt that it was a shameful thing that persons should be restricted to Hola in a climate of great heat and possibly other discomforts. Well, let me tell the hon. Member that at the place Galole there are quite a number of persons who have been released from restriction of any kind who have been given the opportunity to return to their home districts but who have not done so. They find that they can make a living on this irrigation scheme and they prefer to remain there and I, Sir, do not believe myself that any Kikuyu, or, perhaps, Meru is going to live in the sort of place that the hon. gentleman the Member for Central Province South described if it is as bad as he says it is. They are not.

Then, Sir, the hon. gentleman went on to say that the vast majority of the Kikuyu people want Kenyatta back again. That is not my information at all and I am happy to say, Sir, that between Christmas and the New Year I took the opportunity of touring the constituency of the hon. Member for Nyeri and Embu and I had the opportunity of meeting quite a number of persons and that was certainly not the view that was expressed

[The Minister for African Affairs] to me. I shall, no doubt, be accused of saying that all these persons were Government stooges. Some of them certainly were chiefs of education and ability; some of them were locational councillors and some of them were the ordinary persons in the street, but they showed no desire when talking to me to have Kenyatta back—again. While I am on that subject, Mr. Deputy Speaker, the hon. Member for Central Province North talked of a sense of fear; he said a sense of fear remained. It does remain, Sir, but it remains in a very different context from that used by the hon. gentleman himself. It is the sense of fear, Sir, that some of those persons who still remain in detention and who remain unrepentant and unrehabilitated should be loosed upon the community again. That is the fear that is in the minds of a great many thinking persons in the Kikuyu districts. I am sure the hon. Elected Members who come from the Central Province will, in fact, agree with me when I say that.

The hon. Member for the Nairobi Area said that there were a number of persons in detention or restricted who did not have the opportunity of being rehabilitated. Now Sir, every detainee has been given the opportunity of rehabilitation, of passing up the pipeline, provided he does what I said in my opening sentences today, but a great many of them, Sir, have refused to take any part in rehabilitation at all although they have been offered a chance. They have not taken it; they have not taken it for various reasons.

The hon. Member for the Nairobi Area further went on to talk about the conditions of detention, and in particular I think he was referring to Kenyatta. Kenyatta's conditions of living are extremely good; they are very much better than when I was a district officer at Lodwar and lived in a mud and wattle building and whenever it rained the whole of my furniture was absolutely soaked. No, Kenyatta lives in what could be described as a modern villa and, indeed, the hon. gentleman the Member for Rift Valley North visited him there the other day and when he came back he certainly made no complaints to the authority or the authorities

that Kenyatta was living under difficult and arduous conditions there.

The hon. Member also asked what social and welfare facilities existed in Galole. Sir, for the detainees and their families. There is, of course, a school; water is laid on to the villages; there is a Red Cross and Community Development lady posted there; there are crèches for the children; there is much better medical attention than most people now find in the land units. In fact, everything that is possible to be done has been done in the way of welfare facilities at Galole.

The hon. gentleman for the Southern Area asked how one could tell that any detainee had a genuine change of heart. I think perhaps he is lucky not to have had much contact with detainees but it is absolutely obvious when a detainee has had a change of heart; his whole cast of countenance changes; his eyes change; he is friendly; he speaks. It is quite easy to tell whether a person has had a genuine change of heart. I am satisfied that "genuine" should remain in the legislation.

I have dealt with the hon. Member for Coast Rural and his plea for Mwinga Chobwe. I have not dealt with what I believe he said about children of detained persons and the responsibility on the Government to pay school fees. That is certainly a new one on me. But if there are cases of poverty the families of the detained persons then, of course, the guardians and custodians of those children of the detainees are perfectly at liberty to apply for the remission of school fees to the appropriate authority.

I was not at all clear, Sir, as to what the hon. Member for Kitui meant when he talked about three particular persons whom he named and who have been released in 1958 and would not have their cases reviewed by the district commissioner. I am really unable to understand it, because if they were detainees they were quite at liberty to appeal to the Appeals Committee. If they are free there does not seem any point to me in making any appeal to the district commissioner because they are out of detention. If, on the other hand, the hon. Member—and I am determined to continue, Sir—means that these persons are on restriction orders,

[The Minister for African Affairs] then, of course, the restriction order normally applies for only six months and they are perfectly at liberty to go to the district commissioner and ask for their restriction orders to be reviewed.

MR. MUMI: Mr. Deputy Speaker, Sir, on a point of explanation, they have been restricted within their location.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): He also named two Akamba who had not been released from detention although they had not been brought up before a court. He instanced the fact that a number of murderers had been released and he felt that these two particular persons named should in fact be released at the same time. I do not think that the Government has been given enough credit for what they have done in the way of converting convicted persons who were convicted through the courts to detainees. Over 3,400 persons have been so converted and the greater part of them have been released. Some, unfortunately, are still in detention but, Sir, those particular persons who were converted and then released, they were released because they made a genuine effort to rehabilitate themselves and they were released because they did so and could be accepted back. The two mentioned by the hon. gentleman the Member for Kitui I am quite certain have not of themselves made any attempt to help themselves to get out of detention.

Sir, I hope I have covered the points that affected my particular Portfolio and I beg to support.

MR. ODINGA: Mr. Deputy Speaker, Sir, many points have been dealt with by the previous speakers on this side and I have only to deal with a few points which have been raised by some Members both from this side and from the other side of the House. Mr. Deputy Speaker, if I begin with some of the points raised by the Minister for African Affairs, I will say briefly that he has just mentioned—that recently during the Christmas time he had the time to tour the Central Province area and there he met several people, he met good chiefs, he met some hon. gentlemen in the country, and he did not actually come across a man who expressed to him that they wanted Jomo Kenyatta back.

[Mr. Deputy Speaker (Mr. Bechgaard) left the Chair]

[Mr. Speaker (Sir Ferdinand Cavendish-Bentley) took the Chair]

Well, Mr. Speaker, as is always with the Government, they will always misjudge and miscalculate the opinion of the people and this is not the first time that they have done that and we would not be surprised to hear that that would be his opinion. What about, let me cast my mind to a country which somebody has just mentioned here—a country like Ghana. When the British introduced the new constitution there they did not expect Dr. Nkrumah to come and be the Prime Minister. They had locked him up and he was counted as the worst man, yet when the constitution came they did not assess properly the public opinion and they did not know that the opinion of the whole country was with him in the prison where he was.

Mr. Speaker, the Minister again raised another point on the school fees; that with the children of these detainees the Government would consider the remission of fees. But he did not, although some of our people from this side mentioned it, he did not deal with the question of boarding fees for these children. This matter of schooling for the children of the detainees is one of those matters which is so vitally important for this country that it would be for the Government to look into it and see that these children really get their proper education. They should not suffer just because their fathers are detained. Otherwise the Government would be instilling into these children another ill feeling so that when they come up they will feel that they did not have their chance to learn as other people, simply because the Government had detained their fathers.

Now, Mr. Speaker, I have got here one or two points to deal with in the speech of the hon. gentleman from this side, the Specially Elected Member, Mr. Blundell. He raised the question and gave a very good example that with the long detention of Mr. Harry Thuku, he is now a very good boy of the Government. Well, it is really pitiful and I think that it is not the example which should be raised in this House.

[Mr. Odinga]

The hon. gentleman knows that Mr. Harry Thuku tried his hand in politics in 1922 and he should understand that 1952 is not 1922. They are quite different. Affairs during that time were completely different from the affairs of 1952 and you must know that during 1952 the African national movement and national spirit had already come into the field. It had already come to stay and it will stay for ever. The hon. gentleman should have known that Jomo Kenyatta was also present during the time of Mr. Harry Thuku and he has not been able to make him what he has made Mr. Harry Thuku and I do not think that he will be able to do that.

Now, Mr. Speaker, I would just say one thing, it is really very serious because as I listened here very, very carefully to many of the speeches here it seems as if one could be led to believe that the Government thinks that the African who is still under detention is an habitual violent man or maybe that violence is inherent in his nature and it needs really strong measures to rehabilitate him in order to make him think the other way. This, Mr. Speaker, should not worry the Government. Violence as we know it is the result of always extreme frustration. Immediately after somebody has tried all sorts of peaceful means to achieve his object and in the end he has failed to achieve the object, he gets frustrated and if he has tried again, he gets farther frustrated and if he goes and tries again and fails he gets extremely frustrated, and in the end by nature, by all human nature, usually violence is the last resort. It is only the last resort and we should not actually pretend about this. It has happened throughout the world, nations and nations always negotiate and negotiate, and when they have negotiated and they cannot achieve anything through negotiation they always resort to violence. And that is known. Therefore, it is better when we are here that it is no good saying like my hon. friend, the Specially Elected Member, here—Mr. Slade—who was trying to suggest that I was being irresponsible when I mentioned such things. I think it is quite responsible for us to be realistic and to talk plainly, never actually to try to mince the languages for nothing at all because we know the behaviour of all

human beings. They are things which happen everywhere. We understand them.

Now, we try to put here the African case and the African point of view. We put them as strongly as we can, we put them as effectively as we can, but if the Government turns a deaf ear and if by years going by the Africans are suffering, by years going by all those masses are suffering, the time will come—there will come a time—when they will all get frustrated and not actually control themselves any longer or any more. They will get out of control and then when the confusion comes you, the Government, will jump on somebody like Odinga, and say, "Oh, it is because of his wild statements. It is because of such things which he says", like now you are charging Jomo Kenyatta with them. Jomo Kenyatta began talking about these things ever since 1920. He went to Great Britain, he returned to this country, he was just trying to plead with the Government, and if people were sending him all those times and the Government turned a deaf ear from 1920 up to 1952, if the people had waited for 32 years, don't you think that if the people got extremely frustrated and they broke into confusion as they did, who is actually to blame. It is better always to face the realities and face the facts as they are. And we should not think that all those people, they are all wrong and we are correct.

Now, Mr. Speaker, we say here that these people are more or less violent or may be their attitude has not changed. Well, what attitude could you expect them to have if they in themselves know that they are innocent? They know that they were arrested on suspicion. They are being detained for no other reason at all. Could they coin dishonourable lies at all in order to convince the Government that they are innocent? How could they do it? Now, some people will tell me that they have now got better information about those people. They have now got in their heads a lot of information which makes it quite plain that Jomo Kenyatta did manage violence and all those things. Well, if he did, what about the Macharia case recently? Macharia was the chief case witness in the Jomo Kenyatta case and if the magistrate laid the stress on any

[Mr. Odinga] evidence it was on Macharia's evidence. And Jomo Kenyatta was sentenced chiefly on the Macharia evidence. Recently, what happened? Was it not made perfectly clear that—

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): On a point of order, Mr. Speaker, this is a most monstrous travesty of the truth and the hon. Member knows it. Jomo Kenyatta was found guilty on 14 different incidents. Macharia testified to one incident. Macharia then claimed to have testified falsely and was found by the magistrate in his recent trial to have perjured himself in making that claim. Let us at least have some respect for the truth in this House.

MR. ODINGA: Thank you, Mr. Speaker, when the hon. gentleman interrupted me I think I probably got him quick to action because he knew I was speaking the truth—

THE SPEAKER (Sir Ferdinand Cavendish-Bentineck): Order, order! We are now here discussing a Bill. We are not discussing proceedings at a judicial trial or personalities both of which are out of order. Will you please confine your remarks to the Bill which is now before the House.

MR. ODINGA: Now, Mr. Speaker, I will say that it is for the Government to try its best to see to the truth and see that I think Mr. Jomo Kenyatta or any other man—

THE SPEAKER (Sir Ferdinand Cavendish-Bentineck): Order, order! I have given a ruling and you have disobeyed it. I shall not allow you to continue. Will you kindly sit down. Does any other Member wish to speak, Mr. Nazareth.

MR. NAZARETH: Mr. Speaker, Sir, there are certain questions which this Bill raises which during the part of the debate that I listened to do not appear to have been adequately dealt with. Certainly I did not seem to have heard anything on that point from the hon. and learned Member when he moved the Second Reading. The principle on which this Bill seems to be based is apparently that it is necessary in the interests of security that these persons be detained and the definition of "rehabilitated" makes reference not only to the necessity of these detained persons renouncing any con-

nexion with unlawful societies but also to the requirement that their return must not materially prejudice the public safety or the maintenance of public order so that the real question is, is it necessary to detain these persons in the interests of security since rehabilitation is tied to the question of security? Now, reference has been made to a number of persons who have been detained and I have been particularly concerned with the names of certain Africans who occupied leading positions in political life before their detention. Some of them have never been charged, some of them were acquitted having been charged and later were taken into detention, persons like Odede whom I think has never been charged; I think Achieng was a person who was acquitted and then taken into detention. There was the case of John Mhwi Koinange who is detained.

Now, if this renunciation of association with an unlawful society is a necessary part of the definition of a rehabilitated person, presumably then a person before he can be regarded as rehabilitated must convince those who are detaining him that he has no connexion with any unlawful society. Now, I am wondering what happens in the case of a person against whom an allegation is made by somebody or other that he has taken an unlawful oath. Supposing he has not in fact taken that unlawful oath? I have heard from time to time in this Council that a confession is regarded as a very important part of the process of rehabilitation and I am wondering whether in practice it is not insisted upon before the person goes into the pipeline. Now, many of the persons who are in detention have, I believe, co-operated with the authorities, they have done whatever the authorities have required them to do, but they have not confessed to any connexion with an unlawful society. Some of them, it might have been alleged against them that they had connexions with an unlawful society. So that as long as the authorities are convinced that a person had a connexion with an unlawful society and he does not confess to that connexion, apparently he would not go into the pipe line. He would not be regarded as a person who is rehabilitated.

Now, these are persons who in many cases have been detained for several years and if they had no means of

[Mr. Nazareth] proving, if they are unable to convince the authorities, that they had no connexion with unlawful societies, and yet are believed by the authorities to have the connexion, when and how are these persons going to be released? Are the authorities going to indefinitely detain them until they confess or, on what basis are the authorities going to act in deciding that the person is rehabilitated? If the detention of these persons is necessary in the interests of security, it must be shown that they are a danger to society. And while it may be necessary to detain a person without trial for some time at a time of acute pressing danger because it is not possible to bring him to trial, I do not think the same situation applies when that pressing danger has passed. And we are now at a time when that pressing danger has passed, when the Emergency is about to be brought to an end. I had not seen any reason advanced, not heard any reason advanced from the Government benches justifying the long detention of these persons for so many years without trial. After all, a man has a right to liberty, and there is no justification for depriving him of that liberty except on the grounds that his detention is necessary in the interest of public security, or on the grounds that he has been tried and found guilty and therefore you are justified in depriving him of his liberty. If there is not then this pressing danger to detain these persons without trial, they have a right, I think to be brought to public trial. In the early days it was not possible to bring these persons to trial because there were so many hundreds and thousands of them. You could not have had trials of all these persons. That was a time of acute and pressing danger. Now the number has been reduced to two or three hundred, and in the case of some of these leaders, surely if they are not prepared to confess then they have a right to claim a public trial. If the reason given for denying them a public trial is the danger to witnesses surely we have seen no evidence of that danger in recent months.

The case of Rawson Macharia has been mentioned, I do not propose to discuss the case or the merits of the case. I mention that matter only from one point of view, and that is that Rawson

Macharia was one of the witnesses, apart from the many other matters on which the learned magistrate relied, and one of the persons whose evidence was accepted, and on whose evidence Jomo Kenyatta was convicted, and yet apparently he was at large.

THE SPEAKER (Sir Ferdinand Cavendish-Bentineck): You are out of order in discussing Court proceedings.

MR. NAZARETH: The only point, Mr. Speaker—

THE SPEAKER (Sir Ferdinand Cavendish-Bentineck): As I have already ruled, we are discussing the principles contained in the proposed Ordinance now before the House. I cannot allow discussions on a judicial case or on personalities. These are out of order and have nothing to do with the question.

MR. NAZARETH: The only point I would mention, Sir, is that persons who have given evidence have been at large and, therefore, it has not been shown in recent months that witnesses who give evidence against persons are in danger. Therefore, I am suggesting that there is no pressing reason, no compelling reason, which justifies the Government in refusing these persons a public trial if they so claim. I do not think it is an adequate substitute for a public trial in open court, with cross-examination, with the assistance of Counsel, that it is an adequate substitute for such a public trial that you have a private enquiry even if it is by an advisory committee, and even if there is in it a Judge of the Supreme Court, and even if it has those particular assistances or helps. Certainly, it does not stand in the same position as a public trial. So that my submission is that in the case of persons in leading positions who have been detained and who cannot be expected, or who are not prepared to make confessions probably because they do not admit, they do not accept that they have any connexion with an unlawful society, if they could be given a public trial they should be entitled to it. Otherwise it would seem that on the principle on which the Government appears to act they have no hope of ever being released because they will never admit their association with an unlawful society seeing that they take the position that they have had no connexion with an unlawful society.

[Mr. Nazareth]

There are one or two matters which have been mentioned which I would just refer to in passing. One is the case of Chief Koinange. I cannot understand why he is still placed under restriction or detention. He is a very old, helpless man, and I do not know what the reason is that he is not regarded as rehabilitated, or what the reason is that he is regarded as not able to travel to his home, but I think the Government probably has sufficient information and knowledge on the matter to know that he is too helpless to be able to excite disaffection or constitute a danger to public security. There is also the matter of the wives and children of persons who are detained. Now, in the case of a person who is convicted, naturally, his family suffer. It follows as an incident of punishment, but in the case of detained persons, they are not regarded as persons punished, but persons who are being detained in the interests of public security and, therefore, it is not part of the incidents of detention of such a man that his wife and children should suffer. I do feel that in the case of persons who have been detained for so long, and who are unable, therefore, to maintain their wives and families, there is an obligation on Government to support and maintain the wives and the children of these persons. Since they are not being punished it is, I feel, not right that the Government should not accept responsibility for the maintenance and the education of these children. I am told that there are a considerable number of children of these detainees who are unable to secure a proper education, and I feel that that is an aspect of the matter to which the Government should give very serious attention.

I have been told of the case of a businessman who had apparently been victimized as a result of the right of the Government to keep him in detention. He has lost a great deal of property. He was a man in a great way of business—very successful. He has had villages built on his land. He has had his lorries taken away. I will mention the case to the Minister since I would not like to give his name on the Floor of the House. But why I mention it is this—is it right of the Government to detain a person without trial when it enables persons who may have a grudge against him or

who may desire to profit from his detention to secure an advantage thereby. There is, therefore, a very particular responsibility on the part of the Government to investigate such cases with the greatest care. I hope that the Government will be very alive to that. I am told, of course, that that is the policy of the Government, that there is this Commissioner—I do not know what title he has been given—yes, a Special Commissioner. I think, has been appointed to investigate these cases, and who, no doubt, if a complaint was made, would go into it. I do not know how much attention he can devote to each and every individual case, but the general principle of this measure is, as I have said, that it is necessary for security, and it is necessary that the Government should in every case be able to justify that the detention of that particular person is necessary in the interest of security. In the case of African leaders who are being detained, I hope the Government will be able to satisfy the public that each and every one of them who is being detained is a menace to security and that his detention is necessary.

THE CHIEF SECRETARY (Mr. Coult): Mr. Speaker, Sir, I do not wish to say a great deal in this debate because my hon. friend the Minister for African Affairs and the Minister for Legal Affairs either have, or will, deal with most of the points which have been raised. In looking round I must say that I am disappointed that those people who have seen fit this afternoon to criticize so heavily the Government are not here to hear what the Government may have to say in reply to their criticisms. But I would like to say this in relation to this question once again of the Government creating confidence amongst the people. Once again we have had this afternoon two hon. Members making statements of this nature: "My people's reaction to the Bill will be such that it will spoil the whole effect of lifting the Emergency," and another Member said: "We are always misjudging and miscalculating the opinion of the people." Now, Sir, I would like to ask, what is it that the people think? I would like to suggest to the two hon. Members who made these particular statements that probably at least 75 per cent of the people in their constituencies have not even read these

[The Chief Secretary]

I would also like to suggest to them that they may never read the Bills. All they are going to know about what these Bills contain is what they are told either by themselves, or by what is reported in the Press. Now, Sir, I feel that in the debate which took place yesterday, and in the debate which has taken place today, a number of hon. Members of this House have either misunderstood the intentions of the Government, because they have not taken the trouble to find out what the intentions of the Government were yesterday, or are today, or—and I hesitate to suggest this to this House—they have deliberately misunderstood the intentions of the Government for the sake of making political capital out of these debates. It is quite clear, or should be quite clear to all Members of this House that these two Bills have been taken before this House in order that we honestly can bring the Emergency properly to an end. No Emergency of the size, of the magnitude and of the terrible ferocity of the one which Kenya passed through could possibly be brought to a close in a matter of minutes or by the signing of a piece of paper. Obviously there are portions of that Emergency which are going to go on. We dealt with two of these yesterday, and we are trying today to deal with another aspect of the residuary part of that Emergency.

Today examples were given by the Minister for African Affairs over the question of restriction which, I think, clearly show the Government's intention of, as far as possible, exercising mercy. Some Members have already been told that cases have been considered by the Government, and the Government has agreed that certain restricted persons will be allowed to return to their locations, but not in the words of the Member for Embu and Meru can mercy be unrestrained. Mercy in this case, obviously, must be tempered by common sense.

The hon. Member for Central Nyanza, amongst a number of other quite astonishing statements, but the one in which he had a passage of arms with my hon. friend the Minister for Legal Affairs I must take grave exception to because it is one of these things about which I was talking a moment ago when I said that it is the responsibility of people in

this House to make quite certain that the people know the truth and the facts. The hon. Member said that we must face realities. Well, I would like to tell hon. Members that they are not facing realities if they are not going to tell their own people, both here, in this House, and in their own constituencies, exactly what the intention is behind these Bills. If they are going to make statements which do willingly or unwillingly, with intention or without intention, create misunderstandings in the country, then they are irresponsible, and they should not be here in this House to make irresponsible statements.

Part of this Bill which relates to people who are detained without trial—and I do not intend to go into the detail of such questions of people who are detained without trial, following on the speech which was made by the hon. Member who has just sat down—is, in fact, to carry out clear undertakings which have been given by the Government in the past as to what they would do with desperate men who were locked up in the Emergency. People, as I have said in this House before, appear to have short memories. They appear to forget that there were desperate men in this country who caused a great deal of suffering and misery to a lot of people, and there are a lot of people in this country who do not want to see them back again for these reasons. We would like to see them back again, and we have given another clear undertaking that we will try to get them back as soon as we possibly can, but we are not going to let them come back into society until we know that they are people who are prepared to take their proper part in the society to which they return.

One other point I wish to make, Sir, and it is a matter of detail. I do not know in view of your recent ruling whether I am in order, but the question of a school teacher at Kilimambogo was raised, and the hon. Member for Nairobi Area referred to this question of restricting him when he is in charge of children as "what sort of nonsense is this?" Well the sort of nonsense this was was an attempt on the part of the Government to employ a person who had been known to be a good teacher in the past, in the belief that he was rehabilitated, in an area which we felt

[The Chief Secretary]

under the supervision he could not do a great deal of damage. I am sorry to say to this House that I am not at all certain that this experiment in clemency—and that is what it was—has been entirely successful and, indeed, it may be necessary to take him away from this particular place, but it was eventually necessary to restrict him and it may be necessary again to restrict him, but I do want to make the point that he was there because the Government tried to give the man a reasonable chance to rehabilitate himself in a job for which he was best suited.

Before I sit down, Sir, I would like, in considering both these Bills with which we have been dealing both yesterday and today, to remark that it is only fair to say in this House that a great deal of thought and a great deal of work has been done by my friend the hon. Minister for Legal Affairs. Only those of us who are closely connected with the inner workings of the Government know how much care he has given to these Bills, with particular reference to such things as the Human Rights Convention, which has been raised in this House, and I would like to say that we should all be indebted to him for the care and thought which he has put into this post-Emergency legislation.

I beg to support.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, it is depressing, but we are paid on this side of the House not to be discouraged by such things, that whenever we present to this House a measure designed to protect public security, to protect the decent, law-abiding citizen of this country from the machinations of the evil men of this country, we are faced with an almost united front of opposition by our African friends. As I say, it is depressing, Sir, but we are paid not to be discouraged by such things and we shall continue to do our duty by the law-abiding citizen of this country in the face of whatever opposition we may encounter.

Now, Sir, no one, and I think I can say particularly no member of my profession, likes the idea of detention without trial like the idea of any restraint on personal liberty without trial, but, Sir,

so long as the freedom of man has been recognized, there also has been recognized the inevitable fact that, at times, that freedom has to be protected and in order that it be protected and preserved it may have to be impaired temporarily, and when a country finds itself in a state of upheaval, a state of civil war, a state of murder, bloodshed, violence, a state of the most ghastly bestiality, taking part of its people to the very depths of human depravity, then that is the sort of time that those freedoms must be surrendered temporarily, impaired temporarily, in order that they may be preserved, in order that the men and women of the country may be preserved to enjoy them.

Let us think back. My hon. friend the Chief Secretary has reminded us that memories are short. We are asked for mercy, we are asked to take a risk. We have extended mercy on a very generous scale. We have taken calculated risk after calculated risk. Are we entitled to take risks which we believe to be dangerous risks? Let us think back. Let us think back to that night at Lari when small babies had the tops of their heads shaved off and their brains eaten by their murderers. Let us think back to the thousands of murders in the most horrible and bestial form, burial alive, dismemberment, disembowelling. Let us think back to the bestiality of the oaths, the ghastly sexual perversions which were part of those oaths. And let us consider that these men whom we are proposing to try to rehabilitate under the powers that this Bill confers upon us, these are the residue of the evil men who are responsible for that terrible story in the history of this country.

Now then, let us view the matter, perhaps, in more sensible perspective. Are we justified in taking dangerous risks? Would we be justified in opening the floodgate and returning that residue unreclaimed, unregenerate, with the risk that the first thing they would set their minds and their hands to would be to revive the miseries, the sufferings, the horrors and the bestialities for which they were previously responsible? Let us have a sense of responsibility in this matter.

I have been asked in the course of the debate how I can justify this measure under the Human Rights Convention. It

[The Minister for Legal Affairs]

is, of course, entirely true that Article 5 of that Convention proclaims the right of every man to liberty and security of the person, subject only to the recognized exceptions, such as imprisonment after due trial. In Article 15 of that Convention it acknowledges the necessity at certain times to derogate from the human freedoms which are enshrined in the Convention. That Article reads in the first paragraph of it—the one which is material—"In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law." Under that Article we have, of necessity, derogated from our obligations under the Convention in the past during the Emergency: we have notified the Council of Europe of that derogation—derogation by way of invasion of human liberty which it has been incumbent upon us to impose, detention, restriction, restraints on other manifestations of human freedom.

Now, Sir, no emergency, as has already been said in this House by my friend the Chief Secretary, no emergency is turned off like a tap. It is all very well to say that once you have collected your troublemakers and put them into detention your emergency is over, therefore you have no grounds for continuing your emergency powers. That is, of course, quite ridiculous, because if that were so, as soon as you have collected them and put them into detention you would say that your emergency is over and you would have to release them from detention. And so you would go on with a sort of leapfrog from emergency to emergency.

These international conventions are not founded on such stupidity, they do recognize that you have a condition of affairs that requires that the obligations that we have undertaken under this Convention may have to be derogated from for a time, for the time during which the causes of the emergency which gave rise to those derogations remain. And therefore we are perfectly entitled under this Article to derogate so long as our

residual Emergency problems remain with us, and in so far as this Bill which we are considering today deals in fact with a projection, a continuation, of the Emergency detention problems with which we have been dealing in the last seven years, there is no distinction between it and the derogation which has already been notified from our obligations under this Convention, no difference from the derogation which we have already been impelled to notify in pursuance of our Emergency legislation. I can assure the hon. gentleman that very close consideration has been given to this problem, not only by myself but indeed by Her Majesty's Government in the United Kingdom, with various branches of which, legal advisers, law officers, I have had long discussions and conferences on this very subject.

I would like to make one point clear which I think has not really been fully appreciated, or does not appear to have been fully appreciated, by some hon. Members on the other side in the course of the debates yesterday and today, and that is that neither in this Bill nor in the Regulations which I tabled yesterday under the Preservation of Public Security Bill, is any power taken to make fresh detentions. This Bill refers, as I explained in my opening, to a defined and limited category of persons, persons who are already under detention or restriction. It does not import any power to make fresh detention, save only in respect of the terrorists at large, which I do not think any one would cavil at, and those persons who are specifically named, not being in this country, but who if they were in this country, as I have mentioned, with our position at the moment, probably would have to be controlled under this Bill.

It has been suggested, I think by the hon. Member for Central Province, that the test of rehabilitation was that the person should agree to support the Government. Let us banish any such thoughts from our minds because they are quite wrong, quite mistaken. We do not ask anybody to support the Government as a mark of good and acceptable behaviour. We acknowledge that anyone in this country is perfectly entitled to disagree with us, to think that we are wrong. Mere support for the Government is neither here nor there, what we

[The Minister for Legal Affairs] want is a decent moral outlook on civic obligations, so that we do not get from these detainees when they return to society the sort of behaviour that we have experienced, all too unhappily, from them and their fellows in the *Mau Mau* movement during the last seven years and more.

We are also asked what is the Government doing about parts of the Fairn Committee's Report, we were asked what were the divergences of views on the *Kiama Kia Muingi* between Government and the Fairn Committee. Let me make it quite plain that the Fairn Committee, as we have already pointed out, did not have full information about the *Kiama Kia Muingi* and they could not possibly have reached the conclusions which they did, had they had the information which was available to the Government of the practices, the oathings, the murderous conspiracy, the obtaining of poison and the plans to use poison on a wide scale, which *Kiama Kia Muingi* practised.

My hon. friend the Member for Meru is not here so I will not bother to answer his point. My hon. friend for Nairobi Area has just arrived so perhaps I might answer his points, those which I have not answered already. He asked would a person appearing before the tribunal be allowed to be represented, would he be informed of the grounds on which he is held. There will be provision in the Regulations for them to be informed of the grounds on which they are held, but not necessarily of the names of the witnesses; that will depend on security and the need to safeguard the safety of those witnesses. Whether or not they will be allowed to be represented by advocates will depend on the tribunal itself. Usually, not only in this country but elsewhere, it has been found that such tribunals, even though they are presided over by judges who are well aware of the value, the high value, of members of my profession, do not always feel that in matters of this nature they can appropriately be allowed to appear on this sort of enquiry.

Now, a lot has been said also as to why people in detention or restriction have not been charged or tried in the

courts of law, why do we not do it now, because witnesses should be prepared to testify in open court although they were frightened to do so in the earlier days of the Emergency. Well, of course, one must remember that a great many of these witnesses are dead. Many of the bodies that were dug up, the hundreds of bodies that were dug up from the bottomless pits and latrines and that sort of thing, in the course of the Emergency, were of persons who had either testified or given information or would be witnesses against persons in detention; added to which, even if you could obtain the necessary witnesses now, is it likely, really that those witnesses could speak with completely reliability to matters of detail that occurred seven or more years ago? My friends of my own profession on the Benches opposite will, I think, realize how difficult it is sometimes to get a witness to speak with accuracy of events which occurred three or four weeks ago let alone three or four years ago and twice that time.

Now, as regards the accuracy and the justifiability of the grounds of detention or restriction of those who are in detention or restriction, may I say this. Mr. Speaker, that, after a long, long road over many years and over many obstacles and difficulties, we are now down to a comparatively small number. Methods and processes are improving all the time and, as one might say, within the limits of human fallibility have been perfected. The information which we have received, voluminous as it is, has been checked and cross-checked and counter checked. We have the most elaborate system now in our intelligence system and our rehabilitation organization of knowing how much reliance can be placed on what information against which person, and I think one can say with confidence that no information which is unlikely to be true is now relied on by those organs of the Government concerned with the review of cases of detainees or restrictees. It must also be remembered that in the review of such cases nowadays we have not only the original information on which the orders were made but we also have the records of the men themselves while in detention and that is very often the most revealing record.

[The Minister for Legal Affairs]

I entirely accept from all Members opposite who have made the point that it is the responsibility of the Government to be sure to make sure, and constantly to review the grounds for the continued detention and restriction of persons. I do maintain, however, that, as I say, within the limits of human fallibility we have achieved as great a degree of accuracy and certainty as is humanly possible.

Mr. Speaker, Sir, you have been most considerate and indulgent to me and I am most grateful, Sir.

I beg to move.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole House tomorrow.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): We are now well past the time for the suspension of business. I therefore adjourn Council to 2.15 p.m. tomorrow, Wednesday, 6th January.

The House rose at forty-three minutes past Six o'clock.

Wednesday, 6th January, 1960

The House met at fifteen minutes past Two o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:—

Sessional Paper No. 3 of 1959/60—
The Sale of Nyeri Electricity Undertaking.

(BY THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones))

THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones): With your permission, Mr. Speaker, I would add that the Paper will be circulated in half an hour.

COMMITTEE OF THE WHOLE COUNCIL

Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

[K. Bechgaard, Q.C. in the Chair]

Detained and Restricted Persons (Special Provisions) Bill

Clauses 2 to 5 agreed to.

Title agreed to.

Clause 1 agreed to.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Chairman, may I invite you to make the necessary correction to the year under your powers under Standing Orders?

Question proposed.

The question was put and carried.

THE CHIEF SECRETARY (Mr. Coultis): Mr. Chairman, I beg to move that it be reported to Council that the *Detained and Restricted Persons (Special Provisions) Bill, 1960*, has been considered by a Committee of the whole Council and approved without amendment.

The question was put and carried.

Council resumed.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

REPORTS

The Detained and Restricted Persons (Special Provisions) Bill

MR. BRUGHARD: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through The Detained and Restricted Persons (Special Provisions) Bill and directed me to report the same without amendment.

The question was put and carried.

THIRD READING

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, I beg to move that The Detained and Restricted Persons (Special Provisions) Bill be now read a Third Time.

THE CHIEF SECRETARY seconded.

Question proposed.

MR. TOWETT: Mr. Speaker, I rise to challenge, as I said yesterday the Minister for Legal Affairs who has not replied to the questions I raised. I do not want to allow this Detained and Restricted Persons Bill to go without asking the Minister whether he heard what I said or not.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Mr. Towett, this is a Third Reading of a Bill. We have had the Second Reading and there has been no attempt at Recommendation on the Report stage. Under Standing Order 96 (2) if you wish to discuss this Bill on its Third Reading I suggest you move that the word "now" be deleted and that the words "on this day six months" be added to the question.

MR. TOWETT: Well, I am sorry.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I am not trying to stop you from speaking but I am indicating your best method of doing so.

MR. TOWETT: Mr. Speaker, being a junior in the House as well as a young man I welcome your considerate support on my side, and I wish to move that this Bill be read six months upon this day.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): What you wish to move is that the word "now" be deleted and that the words "upon this day six months" be added to the question.

MR. TOWETT: Mr. Speaker, Sir, I think the Minister for Legal Affairs was not here when I got up yesterday to speak. I asked the Minister for Legal Affairs to tell us exactly what he understood by the word "community", and I think I gave several examples of what he should have understood by it, or what I understood by it, and I asked him to reply, or to explain to us what he meant when he is called upon to reply. When he was called upon to reply, Sir, he did not even refer to my asking him to look into what he meant by the word "community" because in this Bill there are some people who are defined as belonging to no community, and I do not know anybody in the world who belongs to no community, and I think, Sir, it was very negligent of the Minister for not replying to my query and for not appointing some other Minister to take over—I mean to act on his behalf—when he was outside the House at the time, and I wish Sir, to hear what the Minister has got to say on that.

MR. MBOYA seconded.

Question proposed.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): The original question proposed was that the Bill be now read a Third Time. The amendment is that the word "now" be deleted and there be added to the words of the question the words "upon this day six months". That is the amendment before the House.

MAJOR DAY: Mr. Speaker, Sir, in my opinion I cannot support this amendment, and I consider that the Bill should be made law with the least possible delay. However, I would like to make a few remarks in general relative to this Bill.

I personally welcome it, Sir, because I consider that possibly one of the criticisms is that it contains the exact definition as to when the powers can be used. I feel, Sir, that that is the operative word that you must have, so far as possible, a decision as to when to put any of these powers into operation.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Major Day you have had your opportunity of making these observations on the Second Reading. It is difficult to allow a long speech in support of a Bill at the Third Reading stage. In opposition, yes.

MAJOR DAY: I will withdraw, Sir, and confine myself to the remarks I made when I first stood up.

THE MINISTER FOR LEGAL AFFAIRS (Mr. Griffith-Jones): Mr. Speaker, Sir, I must apologize to the hon. Member for the Southern Area for not having dealt with the particular point which he raised. I must be honest and tell him my reason quite truthfully. A note was made of the point, in my absence for a few minutes for very necessary refreshment, by one of my colleagues, and on my return the point was communicated to me and I regret that in the interests of truth I must say that my observation was that it was all nonsense, and my colleague agreed with me. However, I can only refer my hon. friend opposite to the dictionary meaning of the word "community". The word "community" is not defined in this Bill; it is not used as a term of art but is used in its normal grammatical meaning, and it means exactly what we would understand it to mean in colloquial parlance.

The hon. gentleman said that there are no persons who belong to no community. I think that that is an over-generalization. I think there are and certainly can be many people who belong to no community. I imagine for instance that if an Eskimo were to take up residence in Kenya he would not belong to any established community in Kenya. Anyhow, in legislative drafting it is necessary to try to anticipate every possible contingency and set of circumstances. I know that we fail very often but at any rate this is one occasion on which we have at any rate anticipated a contingency such as I have just referred to and I feel, shall I say, slightly mortified that I am taken to task for it.

As regards the point which was raised by the hon. Member for the Aberdares, when he rose, I would merely say that powers under this Bill will be exercisable as soon as the Bill is brought into force, and it is the intention that the Bill will be brought into force a day or two prior to the proclamation terminating the application of emergency powers under the Order in Council, so that the mechanics under this Bill, under the Regulations to be made under this

Bill, the making of orders to succeed Emergency detention and restriction orders, etc., can be carried out before the actual proclamation of the termination of emergency powers takes effect.

I beg to oppose.

MR. TOWETT: I have to say one point; and after having heard what the Minister for Legal Affairs has just said I feel a bit satisfied.

I wanted him to take note and I want him always to take note of what we say on this side of the House. In his absence somebody else should make a note of what we say. We do not want to talk when the Ministers are not there.

With those few points, Sir, I concur with what the Minister has just said.

Question that the word proposed to be deleted be deleted put and negatived.

Question that the Bill be read a Third time put and carried.

The Bill was accordingly read the Third time and passed.

BILLS

SECOND READINGS

The Firearms (Amendment) Bill
Order for Second Reading read.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Mr. Speaker, I beg to move that the Firearms (Amendment) Bill be now read a Second time.

I think, Sir, that the object of this Bill could be summed up in a quotation from what I thought was the best speech that I had heard in Legislative Council made by the hon. Nominated Member, Mr. Harrison, yesterday, when he said, "Once bitten, twice shy." We are hoping, Sir, to learn from our previous experience and make sure that we do not make the same mistake again.

From the Emergency, Sir, we have learned the very painful lesson that if firearms are not properly looked after, and if they fall into the wrong hands, it is almost a certainty that, in due course, they will cause the loss of life of some innocent fellow citizen. We must therefore, Sir, make quite sure that the same thing does not occur again.

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Now, the firearms policy, Sir, is based on four principles. The first is the firm control of importation, purchase, possession and transfer of firearms. The second is the need to possess a firearm. The third, if there is a proven need to possess a firearm there must be the ability to use it, so that by negligent use the owner is not a danger to his fellow citizens. Fourthly, Sir, if there is a proven need to possess and the ability to use the firearm, there must be proper arrangements for the weapon's safe custody. Those are the four points on which all applications to obtain a certificate, and all appeals, are judged.

Now, Sir, I do think that there is a certain misunderstanding among certain sections of the public about the possession of firearms. This is, naturally, a question which can be argued, but there are two sides to it. It is, of course, said and it can well be argued that the possession of a firearm will dissuade and discourage the wrongdoer from attacking the citizen and his property. There is the other point of view, as we learned to our cost in the Emergency, and that is that the possession of a firearm, in many cases, may make a person a target for attack in order that an evildoer can possess himself of that firearm. There is also the question, Sir, that if a householder uses force, are we going to breed a breed of criminals who are going to use firearms as well? As I have said, Sir, one cannot be didactic about this. There are very many points of view, but I do not think it is quite so simple and clear-cut as many people think.

Now, Sir, the amendments are to amend our basic Ordinance which is the Firearms Ordinance (No. 40) of 1953. Before that we came to very great grief when we depended upon the old Arms and Ammunition Ordinance (Cap. 302) which was found in practice to be all too defective in many cases. Now, I think we should look at what has happened under the old Ordinance and since we switched to the new Ordinance. In 1953, 667 registered owners of firearms reported that their weapons had been lost or stolen. Now, since 1953 there has been a gradual improvement. In 1957, 27 firearms were reported lost or stolen; in

me make it quite clear, Sir, the Government is not claiming the sole credit for those figures. The chief credit, of course, belongs to the citizens of this country, who have now learned the lesson that if you have a potentially dangerous thing as a firearm you must ensure its safe custody and see that it does not fall into the wrong hands. At the same time, I think it has been helped by the machinery of control, which is based on the Firearms Ordinance, also by the amendments which we made to it from time to time by Emergency regulations and which we now wish to replace by substantive legislation, and, in particular, I think, Sir, the centralization of firearms licensing in the Central Firearms Bureau in Nairobi.

Now, I do not want to keep the House unduly, Sir, but I will run through some of the chief clauses which do amend the existing Ordinance. Clause 3, Sir, the appointment of licensing officers. This clause makes due provision for the appointment of a chief licensing officer and licensing officers. At the moment, Sir, under the existing Ordinance, they have to be police officers. Under the amendment we shall be able to appoint civilians to these posts. For good administrative reasons, it is obviously desirable to ensure that the staff in the Central Firearms Bureau do have continuity of service so that we can ensure that you get continuity of policy. If in every case they are police officers, they are, of course, liable to transfer and promotion, which means that you will not get the continuity which you will get with the civilians. Naturally, the civilians would work under the direction and control of the Commissioner of Police.

The centralization of licensing will ensure that the registers of firearms and their owners will be maintained centrally in Nairobi but I would like to assure hon. Members that the public will still be able to go to their local police station where they will be able to carry out the licensing of their firearms. But the records and the policy will be maintained centrally.

The next clause, Sir, which is altered is clause 4 (b) which is the power to refuse to issue firearms certificates. Now, under the existing Ordinance the licensing officer has no power to refuse the issue

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there are reasonable means of safeguarding that weapon. He can only draw the applicant's attention to the fact and point out that loss of a firearm is a very serious offence. But he has no power to refuse. Now, this is obviously unsatisfactory as I am sure all hon. Members will agree and it is desirable that licensing officers should be required to satisfy themselves when issuing firearms certificates that in point of fact the applicant has got proper facilities for safe custody.

The next clause I would draw attention to, Sir, is clause 5 (a): approved servants. Now, under section 4 it is an offence for any person to purchase, acquire or have in his possession any firearm or ammunition without a firearms certificate. Under section 7, Sir, we exempt registered firearms dealers from this provision and we also allow auctioneers, approved carriers and warehouses to have firearms and ammunition in their possession in the ordinary course of business without having a firearms certificate. Now, I think the House can see there is obviously no objection to the auctioneer who merely holds up the shot-gun or rifle saying, "What am I bid?" not having a firearms certificate. The important person to have it is his approved servant, i.e. the employee who actually carries the firearm to and from the store and in point of fact does most of the handling and has custody of the firearm. Therefore, Sir, we amend section 7 (2) in such a way that servants—the approved servants—of the warehousemen and the carriers and the auctioneers will have to be approved in order to be exempted from the provisions of section 4. In other words, one must be sure that they are going to be reliable persons.

Clause 6, Sir, the production of firearms certificates and of firearms and ammunition. This clause replaces sections 10 and 11 of the principal Ordinance with new sections. Under section 10, as it is at present, failure to comply with the demand to produce a firearms certificate is not an offence. The section as redrafted makes it an offence for a person to fail without reasonable cause to produce his firearms certificate. The present section 7, Sir, empowers a police or customs officer to require the production

who is believed to hold a current—a current—firearms certificate or permit, but it may be known or suspected that a person is still in possession of a firearm or ammunition, whose certificate has expired. As redrafted, the section gives police and customs officers powers to demand, either orally or in writing from a person who has held a certificate or permit within the last five years the production of the firearms or ammunition or to account for their whereabouts. I think hon. Members will see the previous flaw, which was that unless he was believed to hold a current certificate—but in point of fact the police officer or the customs officer has very good reason to believe that he was in possession of firearms but that his permit had lapsed—there was nothing he was able to do about it.

Clause 11 (a), Sir, the section on the sale, repair, etc., of firearms and ammunition. Sir, this clause deletes from the second proviso to section 16 (1) of the Ordinance, which allowed approved carriers and warehousemen and their servants to deliver firearms and ammunition to other persons in the ordinary course of business without seeing that the said recipient held or did not require to hold a firearms certificate. Now, of course, Sir, in practice in self-defence both the approved carriers and warehousemen who are nearly always nowadays banks, did take care to ensure that they were delivering a firearm to a person who was in possession of a certificate and in fact, Sir, after consultation with them the proviso has been found to be unnecessary and is now being removed. In point of fact, they found it was no protection to them and they would far sooner be protected by law that they now can demand to see the certificate before they deliver a weapon.

Again, under the existing provisions the law could also be used by unscrupulous persons to transfer firearms illegally.

When I tell the House, Sir, that there are an estimated 5,000 firearms held by banks, I think the House will agree, Sir, that the withdrawal of even a small part of its holdings, without the Central Firearms Bureau being informed, would throw the whole system of firearms control and licensing into complete confusion.

[The Minister for Internal Security and Defence]

Clause 13, Sir, penalty for failing to keep a firearms' security. Now, I am sure, Sir, that some hon. Members will think that the maximum fine of Sh. 5,000 is too severe. Now, in practice, Sir, that maximum has never been imposed by a court. The maximum fine which has been imposed by a court is £175. But—and this, I think, is an important point—the Commissioner of Police is convinced that the deterrent effect of that maximum fine, even though it has never been imposed, does have a very salutary effect upon people and ensures that they do keep proper custody of their firearms. And therefore, Sir, we do wish to make that maximum penalty permanent. I would point out it is not mandatory. It is at the discretion of the court, and I would repeat that the maximum sentence so far imposed has been £175.

Clause 14, Sir, and clause 16, I am very sorry to see that the hon. and gracious lady, the Member for Nyanza is absent because I know that these two clauses are very close to her heart and the hearts of her constituents.

Clause 14, Sir, is the application of Part 1 of the Ordinance to certain types of weapons. This perpetuates the necessity to licence those imitation firearms which are capable of conversion to fire live ammunition. Now there are, unfortunately a large number of toys which we have learnt by bitter experience, can be converted into extremely dangerous firearms and have been used by criminals for that purpose.

Clause 15, Sir, is to make special provision for certain types of weapon and ammunition, this enables the Minister to prohibit sale, transfer, purchase or possession of such accessories and attachments as he may specify therein. The sort of attachments the Government had in mind were silencers, Sir, and also things like mortar dischargers.

Clause 16, Sir, the importation and exportation of firearms and ammunition section 27 of the Ordinance prohibits the import or export of any firearm except under a permit. Subsection 9 of that section restricts the meaning of firearm under that section to a firearm to which Part 1 of the Ordinance applies.

thus excluding by virtue of section 24 all airguns, air rifles and air pistols unless they are of a type gazetted as specially dangerous. It is considered, Sir, that the import and export of all airguns, air rifles and air pistols should be prohibited except under licence. And it is also considered that safety, toy and alarm pistols should be similarly controlled.

Now the leading criterion of this clause, Sir, is that there are two types of toy weapons which we wish to control, one is the type which can be converted into a firearm, the other is the one which can be used for bluffing an unfortunate citizen into handing over his wallet, because in the twilight it looks exactly the same as the genuine thing. When you learn in the morning that it was only a water pistol, it still does not get you back your wallet. This trick has been used. I say it with great regret, a great deal in Nairobi and Mombasa on occasions when toy weapons have been produced, usually after dark, and the unfortunate victim has handed over his wallet or his watch, to the possessor of what subsequently proved to be a toy. This is small consolation to the victim. Therefore, Sir, we feel that one should control the import of such weapons and make sure that weapons which can be used for this purpose should not be imported except under licence.

Now we can get caught out, Sir. There was an incident which happened only the other day, when an unfortunate Asian gentleman in Mombasa blew off his entire lower lip with a toy which we had allowed through which was no bigger than his index finger, which shows that one must be terribly careful about the type of weapon which appears to be harmless but which, in point of fact, can be extremely dangerous, either to the owner or to other people.

I do not propose to detain the House further, Sir, I have dealt with the main clauses which alter the existing legislation and I would reiterate that I feel—that the Government feels—that in view of our bitter experience in the last seven years, it is essential to have permanent legislation which will control the possession and the safe custody of firearms.

Mr. Speaker, Sir, I beg to move.

MR. WEBB seconded.

Question proposed.

SIR CHARLES MARKHAM: Mr. Speaker, I have one or two points on this Bill which I would like to raise to the Minister in charge of it.

First of all, Sir, when I saw this amending Bill which was laid for discussion later on in this Session, I had hoped, Sir, that we would start to follow the practice of England, whereby firearms such as revolvers and rifles are separate from shotguns. In other words, Sir, I believe there is too little elasticity between this Ordinance regarding a rifle or revolver which are both lethal weapons and kept very much for either offence or defence, as opposed to shotguns which are normally—I use the word advisedly, Sir—kept for sporting or recreational purposes.

Now, Sir, I was somewhat surprised to hear, and I think a lot of my friends on this side of the House were, the Minister talk about clause 4 (b) of this amending Bill of which the Minister said—and I hope he will correct me if I am wrong. Sir—that at the moment the licensing officer had no powers to refuse the grant of a licence, because I would suggest to the Minister that he studies the correspondence columns of the Press over the last five years and I believe he will find numerous examples of individuals having their applications for firearms being refused, or alternatively the application for a renewal of that firearm being refused. If, Sir, the Minister now says that this amending legislation will rectify the position, then, Sir, his own officers have been behaving illegally in the past.

I would suggest, Sir, that something is wrong, or alternatively, perhaps, his brief was not quite clear when he spoke to the House a moment ago and perhaps he would correct it when he replies to this debate.

Sir, I do view with some alarm this aspect of clause 4 (b)—I would like to say now that I have had no difficulty personally with the Chief Licensing Officer, from whom I have had the most considerate courtesy on all occasions and all his own officers. But there is a feeling abroad that the possession of a

firearm in many of the isolated districts does give a measure of protection which would not normally be afforded by the possession of a walking stick or alternatively a blunt weapon of some other sort. I am not necessarily supporting the idea, myself, Sir, but there have been allegations made, as the Minister knows too well, where Government's policy has varied very considerably from district to district and town to town. I hope, Sir, that this amending legislation we are considering today will result in a uniform policy throughout the Colony as opposed to being the will or the whim of any individual officer who might be in a mood on a particular morning to refuse all applications or one afternoon after a good lunch to accept all applications. That, Sir, casts no reflection against any officer but I do believe that there should be a policy laid down by the Ministry which does not allow discretion to refuse unless definite proof is given under various clauses of the Bill we are now considering.

At the same time, Sir, if Government proposes to remove the firearms of individual citizens in this country they, themselves, Sir, must take some responsibility for protecting citizens of this country, and we know cases, we can quote them in this House, where perhaps—I use the word advisedly—perhaps possession of a firearm might have prevented a tragedy which has occurred on one or two occasions. Equally, Sir, I know the Minister can reply that the possession of a firearm might have resulted in a tragedy, but we would like an assurance that regardless of the colour of the applicant's skin, regardless, Sir, and I use those words again—regardless of the colour—if the individual applicant justifies the possession of a firearm, then, Sir, his application should be granted. There are rumours—and I am saying that, Sir, rather than using any other specific term—rumours going around that the colour of one's skin definitely does help in applying for a firearm's licence.

Having heard the "Hear, hear, hear" from the hon. Member for Central Nyanza, I would not dream, Sir, of recommending—anyhow, Sir, we will leave that. Unless, of course, Sir, he wishes to—No, Sir, we had better leave that too.

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Sir, there is only one clause on which I wish to comment and that is, Sir, clause 14, and you might well say clause 16, it bears the same context, regarding air guns and air pistols.

The House, Sir, will remember that one of the most tragic murders by *Mau Mau* occurred in the Ruaraka area, near the Spread Eagle Hotel, in which two small boys were murdered by *Mau Mau* because the gangsters involved thought that the air gun in possession of the two children was a normal rifle and they wished to steal it.

Frankly, Mr. Speaker, I view with alarm the increased use of air guns in this country and I do not know what experience the Minister has of this particular subject, but probably he has equal to that of mine in which he also fears the possession of air guns because they are a most lethal weapon. We do know, particularly in the towns, that you can now buy air guns or air pistols which are extremely powerful and which are almost as powerful as a .22 pistol or rifle. There is always a danger, Mr. Speaker, in the event of an emergency or local trouble that the person possessing one of these air guns or air pistols will attempt to use them. I would hope, Sir, that the Minister might reconsider this particular clause, although I know he has got powers, because it is stated in clause 14, the proviso about a type declared by the Minister. But he might reconsider whether it is not desirable in our undeveloped state in this Colony that small boys should not be allowed to possess—small girls, for that matter, are an equal menace—these powerful air guns or air pistols. And particularly, Sir, my remarks apply again when we come to clause 16 of this Bill, when the Minister explained about the danger of being held up by one of these firearms, which are not really firearms according to the law.

I would like the Minister to tell me one thing when he replies, Mr. Speaker, and that concerns the possession of air guns. Unfortunately, for myself and for the odd mousebird, who is not a constituent of mine, my son enjoys shooting with his air gun at the odd mousebird or the odd . . . The Member for the Coast says, "Shame", Sir, but they are parasites and again no comment. The odd other

animal of the vermin variety. I am concerned—very much concerned—that one of these days an expert, such as has come to pass all over the world, especially in Germany, will produce an air gun which is so powerful that it will be exactly the same velocity or very near the same velocity of a .22 or something stronger.

Well, now, I hope, therefore, the Minister will lay down by regulation the strength or power of any rifle he allows to be sold to members of the public. Nevertheless, Sir, and I want to ask this specific question. Is it true that an African cannot possess an air gun? I was told the other day that that was so, and if it is, Sir, I cannot believe that we, in this House, can have passed amending legislation today which is discriminatory towards one particular race. If it is not true, Sir, I would like the Minister to tell us so, because I did find this out in my own experience when I asked my office boy to take round my son's rifle to be repaired, and I was told it was illegal for an African to be carrying an air gun in Nairobi. Well, Sir, I do not believe any African child is any more dangerous than any European or Asian child, and I hope, Sir, that we can prohibit all children from carrying them around regardless of race. That Sir—

MR. COOKE: You are now becoming pro-African.

SIR CHARLES MARKHAM: I do wish, Sir, the Member for the Coast would not call me pro-African, Sir. I am discussing a Firearms Bill, but as I have, Sir, a licence for my revolver, it may well result in tragic circumstances for the Member for the Coast later on.

Sir, my final point does not concern this Bill at all, but it does give the opportunity for the Minister to explain to the House one aspect of firearms licensing which is causing concern to members of the public. That concern, Sir, is the condition of the rifles or revolvers taken into custody by the police and at present retained at Gilgil for safe custody. I would like an assurance—and I am afraid I must declare an interest, Mr. Speaker, as some of mine are involved—that they are being looked after properly. That again, they are not being disposed of for sale, and another final assurance requested is that members of

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the public can inspect those rifles or revolvers, or alternatively take them out of the country for sale, if they so wish. The days, I think, have gone, Sir, where people wished to use rifles for shooting as they did in the old days. Photography now is more popular. But there are certain values attached to some of the heavier sporting rifles of which there is no ready sale in Kenya, but there would be a sale outside the East African territories, or the Kenya territory, anyhow, and I hope there would be no difficulty put in the way of an individual getting his rifle out, or his revolver out of Kenya.

That is all I have to say on this amending Bill, Sir. I apologize to the Minister for raising issues now. I do not think it is coming up until tomorrow. I thought we were debating other subjects today, and my final remarks, Sir, are these. That I realize his difficulty. I realize that any legislation controlling firearms is bound to have aspects which are objectionable to many of us, but on the whole, Sir, I am glad of one thing. I am extremely glad there has been no mass issue of firearms to all the population of Kenya because I believe that might have caused us more disasters now and again in the future. Nevertheless, I would ask the Minister to consider very seriously that people living by themselves are entitled to protection, and therefore if he can see his way to giving some directive to licensing officers, then, Sir, I would be very grateful.

Sir, I beg to support.

MR. MATE: Mr. Speaker, Sir, I am not an expert on firearms, but I would like to mention the fact that there is a general fear among the African people that for those who wish to obtain firearms it is not easy to get a licence. I would like the Minister particularly to give an assurance that this would not happen where people who require these arms generally apply for them, and they would not be refused these firearms on grounds of race—I say on grounds of race because it has been alleged that Africans cannot use these weapons because they cannot look after them. But, Sir, that is not the case. We have many Africans who are experienced in handling firearms, whether they are ex-Army, ex-Police or ex any other job, and there

are many people who feel inclined to acquire them, and sometimes they feel afraid that the applications may not succeed. As the hon. Member for Ukamba mentioned, I hope this will not be racial at all, but rather according to need. I would not say that everybody who goes for one should be given one. I do not see the need for giving everybody a firearm, but for those who genuinely need them I can see a case for them feeling free to obtain them if they can look after them.

I would also like the Minister to specify the conditions in more detail that are required by the licensing officer in order that a person or a man can qualify. I would also join the Member for Ukamba regarding these air guns and the use of such instruments by younger people and for toys. Mr. Speaker, we Africans have used arms for many years. Bows and arrows—and we are not afraid of arms. And I feel that the African people can use arms with responsibility like other people, and I would like the Minister to stress that there is no differentiation here, provided, of course, that the need is proven on the part of the particular applicant, but that there is no question of say we give it to this community and not to that community.

Mr. Speaker, I beg to support.

MR. OIE TIPIS: Mr. Speaker, Sir, I rise to support this amending Bill. Firstly, Mr. Speaker, Sir, I would like the Minister, when he comes to reply, to clarify, at least, the position as far as the possessing and the use of firearms in this country is concerned. Personally, I am against the mass issue of firearms in this country because I do not think, for one moment, Mr. Speaker, that we are in a sort of state of War in this country, and if that is the case the mass issue of firearms can only result in these dangerous weapons falling into the hands of unscrupulous persons, which they might use for destroying whatever we value to be good. On that thing I would be glad to know, and that thing is this. As far as the issue of firearms is concerned, I should request the Minister to at least consider each application on its merits, irrespective of the race or colour of the applicant. Of course, we know—I know it is a fact—and if I may put it to the Minister, I would like to know how many

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firearms in this country are held by Africans, Europeans and Asians in that same category, because if it implies that the Europeans or the Asians, for that matter, who are fewer in numbers, need more protection, then I should have thought that the Africans—most of us—living in isolated areas would likewise be entitled to some protection. Take a person like myself, for instance. I am not near anybody. I travel throughout the night. During the last Second-World War I used firearms, and effectively too. No enemy has ever snatched a rifle from me, I can tell you that, and I think the hon. Specially Elected Member, Mr. Humphrey Slade, will bear me out that when the *Mau Mau* came and tried to snatch my .303, then they learned a good lesson. If they could not snatch it, what is there to prevent me, when I apply for a rifle for my own self protection, for the protection of my property and family, to have it provided I can always safeguard such a firearm that it will not fall into the hands of those who are not entitled to possess it. That is my argument. What I would like to ask the Government, and very sincerely too, is this. As far as the issue of firearms is concerned, they must be restricted as much as possible. It does not matter—I heard the hon. Member for Ukamba say that if people living in isolated areas cannot be issued with a firearm freely, or something of that nature, it is the duty of the Government to protect them. Surely, it is not only the European community which is living in isolated areas. We live very far in the bush. I can see the hon. Member shaking his head, but what I am going to say is that as far as that is concerned, let us have no discrimination as far as self protection is concerned, if it is a question of self protection. We heard the other day, Mr. Speaker, an hon. Member of this House trying to ask Government to prescribe the use of poisoned arrows. Of course, it is a well-known fact that we never manufacture firearms. These poisoned arrows are our own weapons of defence, and as such, if people in this House—Members of this House—can come forward to say it is the duty of the Government to protect those in isolated areas if we cannot issue them with firearms, then the African is as much justified in claiming to make his poisoned arrows and use his bow as he

was in the olden days. He is an individual as much as anybody else. If it is a question of protection he should be judged not according to the colour of the African, or else, if the Government is so strict to issue firearms to Africans, then by all means allow them to walk in the streets of Nairobi with their arrows and bows, spears and swords for that matter. I mean if somebody is allowed to have a revolver all the time, why should an African be charged for having native weapons such as a simi or a spear. There are so many streets in the town, we know, and if the European in this country is afraid to be attacked, the African is also afraid to be attacked. I am not, for one moment. Mr. Speaker, asking that we should all be armed at all times. Not for one moment. But what I am opposed to is that a certain section of our community should have the right to be armed whenever they want with revolvers and a certain section of the community should be denied that right.

Now, I will make the story short. I do not want to prolong it these days because I am thinking too much of this London Conference.

We know how much harm was done during the heat of the Emergency. We know that the *Mau Mau* did take every step possible to get themselves arms. Any firearm which was not properly safeguarded was snatched by the *Mau Mau* gangsters and, as such, the Government should be more and more careful now that it strictly restricts the issues of firearms, no matter whether it is Europeans or Africans, or Asians for that matter.

So far as self-defence is concerned, we all want to defend ourselves but not with firearms. Let us use whatever we think is less dangerous than this issue of firearms. If it is by fists, then we can always use them, Mr. Speaker, but the issue of firearms is really dangerous unless we are told that everybody who wants to protect himself will be issued with a firearm. I want a licence. When I apply why cannot I get it? But during the war I was issued with it and I used it. During the Emergency I had a firearm, a big rifle too, but now I cannot have it, travelling in the middle of the night in that bush country full of big game. I am not trying to talk individually, but I would have thought that the people would have to be considered in a very, very clear-cut

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way. I heard the other day, Mr. Deputy Speaker, that a certain delegation, led by my colleagues on this side of the House, the Asian Elected Members, went and saw the Minister so that they may be issued with firearms or something of that kind for their own self-protection. What about us if we did the same? We might as well say, "Well, if a certain section of this country's community is issued with firearms they might be dangerous to our community and we want also something for our own self-defence," and then where shall we be? Where shall we be?

So, Mr. Speaker, I do beg to say that the Government should really stop any issue of these firearms and withdraw any unless it is absolutely necessary for someone to possess them, or else make it a free for all issue. I beg to support.

Mrs. SHAW: Mr. Speaker, I beg to support the amended Bill and, in doing so, I should like to apologize to the Minister for not being present when he made his speech in introducing the Bill: I was unavoidably delayed.

I would also like to thank the Minister for amending section 27 of the Bill, where it deals with safety provisions for the licensing of toy and alarm pistols and rifles and makes provision for the control of the import and export of these rather dangerous toys; but I would also like to ask the Minister, when replying, if he could tell the House if there is provision for controlling these types of firearms which are already in circulation and in the shops of this Colony, because it has been brought to my notice in Nyanza Province that there are a great many of these pistols in the local Indian toy shops and *dukas* and I think they can be quite a danger to human life.

I beg to support.

MR. HASSAN: Mr. Speaker, I rise to support this Bill, Sir. I am glad that this is a great improvement on the previous system for controlling the firearms in this country. However, there is one point I would like to ask the Minister about, and it is in regard to the appointment of the Chief Licensing Officer. I welcomed the system of appointing a Chief Licensing Officer from the civil ranks, but what I would like to know is what position

is going to be created with regard to a licensing officer in Mombasa. One or two persons complained to me that a couple of months ago the Firearms Licensing Officer there was removed and put into the headquarters here, so that they had great difficulty in licensing their firearms and they were told that such things will be done in the headquarters at Nairobi, to the great inconvenience of those holding firearms in the coastal area. Now that the system is going to be put right by the appointment of the Chief Licensing Officer in Nairobi, I hope that a civilian firearms officer will be appointed in Mombasa for the convenience of the people there.

The second point I wanted the Minister to tell us is regarding the improved servants. This, according to this Bill, referred to the servants of the firearms dealers and certain other establishments. I would like to know how firearms staff deal with, say, hunting *safaris*. There are people who go out hunting into the blue and they have their servants with them and they usually have to change their servants every now and then. Will the licensing officer have to approve these servants in case hunters take some of these with them on *safari* and thereby they are considered to be licensed servants, because there have been cases when *safari* people have been inspected by police officers out in the blue and they had their boys, lorry drivers, etc., carrying rifles and I would like to ask what system can be arranged for their convenience.

The third point which I wanted to bring to the Minister's notice is the question of housebreaking that is very common in these major towns as well as in the outside districts. People armed with *pangas* usually break into the shops and they simply frighten the fellow to death and get everything they want by the use of those very dangerous instruments. I would like to know whether the police are going to give consideration to the fact that there should be no area without some number of licensed firearm holders in that locality. That goes without saying. There have been a certain number of complaints made to me that the people who have served in the police know fully well how to handle these arms and yet they are not allowed to have arms because they cannot prove

[Mr. Hassan]

to the licensing officer that it is necessary for their own protection. Now, housebreaking is very common in Mombasa and also in the congested area of this town here, so much so that there have been quite a few murder cases during the last two or three weeks. I feel, Sir, that although after the Emergency the authorities said there was no danger for anybody's life in these towns, the police are quite helpless to catch those murderers, and I personally feel, Sir, that if some people in the localities are quite capable in handling firearms and use them in case of a necessity, the police should give very serious consideration to giving these people the necessary licence.

The other point is the question of demanding the firearm licence. Now, I would like to know if it is an offence for a person not to produce a firearms licence when he is travelling and carrying his revolver if he is called upon somewhere on the way at some outstation by a police officer to show his firearm licence, and if the person is not carrying it then is it going to be considered as an offence, because it is not a small identity card but rather we find that our pockets are already loaded with some very important papers and it will not always be possible to carry this licence in our own pockets. I would like it not to be made compulsory for one person to carry it about with him but rather the police should accept the assurance that the licence will be shown to the police station nearest to the residence of the person.

With these few points, Sir, I support the Bill.

MR. NGALA: Mr. Speaker, Sir, I rise to support the amended Bill. I have a few things that I would like to point out. Sir, but first I would like to know from the Minister what is happening at Gilgil as regards the different firearms collected from Africans during the Emergency, because although these firearms were collected in good order now apparently every African that asks for the return of his firearms is told that they are irreparable now. Now, I do not know whether it is because they are not being looked after properly or whether they are just ignored and become so rusty and useless in the stores there, I defi-

nately would like to know whether these firearms, although irreparable as alleged to be, will be returned to the owners so that the owners can dispose of them in any manner they want, and if they are not going to be returned to the owners what sort of compensation or what sort of arrangement is the Minister going to make to satisfy the owners?

The other point, Sir, I would like to make, is I would like to know what powers will be given to the licensing officer to refuse to give a licence. I feel this is a new introduction which might very much act in hindering the African from getting a licence for holding firearms because I think the African may be told two things. He may be asked for what reason he wants to keep or have the firearms and also he may be asked whether he has any safe means of storing the firearms. For this reason I would like to know particularly whether the Minister will accept the reasons of protecting crops as one of the valid reasons for people who genuinely wish to protect their crops in holding firearms, if they could be considered on that basis. This is because there are many Africans whose crops are being damaged by wild game and Government has failed to provide sufficient game wardens or game *askaris* or sufficient fence protection, and I think it is very desirable that the Africans should be given consideration, particularly so far as protection of the crops is concerned.

Now, the other point I want to raise is that I would like to know the conditions that an African is required to fulfil before he can be thought of as a person who can look after firearms, because this may be the second reason in which applications from Africans can be turned down without any explanation or even the officers bothering about the African applications. I very much suspect, Sir, this very new introduction of giving powers to an officer to refuse, and because of this suspicion I would like a clear explanation from the Minister.

Thirdly, I would like to say that the Member for Ukamba did not really say that the isolated people were only the Europeans. I think it was quite probably explained that it was an implication, but Members concerned did not specifically say or allude to any rates, but I hope

[Mr. Ngala]

that the Minister will bear in mind that we do not want many unnecessary firearms to be issued out into the country for the experience that we have had in the previous years, but, Sir, I think this excuse of having firearms for protection must be handled very carefully because our experience recently has shown that people who are not necessarily living in isolated places are having firearms and even round about Nairobi or these very heavily populated places I think incidents have happened which have given us a lot of suspicion and we feel that the Minister should look into this question of this excuse of having firearms on the basis of self-protection.

I would agree with the Member for Rift Valley Central that under normal circumstances these licences on the basis of protection should not be issued at all.

The other point I would like to make clear, Sir, is the question of hunting licences for Africans. Now, I would like to know how many Africans in the Coast Province or in the Masai area have been given or issued with the hunting licences. Now, there are many complaints about it—

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): Hunting Licences are not mentioned in this proposed measure. You are introducing a completely unrelated subject.

MR. NGALA: I beg your pardon. Thank you, Sir, I would not have pursued it this far but I would like to ask the Minister if he feels competent to put a word in there.

Thank you, Sir.

MR. MUMI: Mr. Speaker, I would just like to put two points on the record. My first point is that there are certain persons in possession of firearms who are carrying them in public places. I am particularly thinking of officers of the Veterinary Department. Well, it is not my intention, Mr. Speaker, to try and expose any members of the public service to this House but I have seen cases where members of the Veterinary Department are required to dispose of certain animals in case of epidemics such as rabies and they have the tendency of using firearms in market places with people around, sometimes on the roads

and in many other public places. I feel, Mr. Speaker, that they should not have a free hand over dangerous firearms in public places.

Secondly, Mr. Speaker, I would like to record public concern over the use of dangerous firearms in daylight by certain members of the communities of this country, more especially against the Africans. I think it should be made clear if a licence is issued for "self-protection" that there is no point in any person, for instance, coming to Nairobi with his rifle by his side in its container. I believe in Nairobi there is sufficient force to protect the citizens of this country against, as my hon. friend the Member for Coastal Area has stated, attacks, and it is ridiculous for members of the public to be in possession of firearms for self-protection in places like Nairobi in daylight. It may be necessary to have firearms for self-protection during the night but certainly, Mr. Speaker, not during the day.

With those few points, Mr. Speaker, I beg to support.

MR. STADE: Mr. Speaker, I support this Second Reading and I should like to concur with everything that the hon. Member for Ukamba has said on the subject of the Bill.

There is only one point, already made by him, which I should like to elaborate a little and that arises out of clause 4 (b) of the Bill. That clause is now going to enable a licensing officer to refuse to issue a licence if he is not satisfied that the applicant will at all times keep the firearms securely and in safe custody; and the Minister, in referring to this particular provision told us very frankly that at present, and in the past years, licensing officers have not had power to refuse licences on that particular ground. They have been able to refuse licences because the applicant could not show sufficient need or for other reasons, but that particular ground of safe custody apparently not, and indeed in looking at the original clause or section as it now stands it does appear to be the case that licensing officers were not entitled to refuse licences on the grounds that there was no evidence that the firearms would be kept securely. Now, Sir, it is perfectly true in support of what the hon. Member for Ukamba said, that the

[Mr. Slade] police acting as licensing officers have represented to the public on one occasion to my certain knowledge, and I think I remember on a number of other occasions with my own constituents, that the licence would be withdrawn unless the owner of the firearm concerned made certain arrangements, specified arrangements, with regard to the custody of the firearm. It was clearly represented by the police that they had a power which apparently they had not. Now, Sir, that does raise a very big principle. One sympathises with the people, because I think this amendment in fact is perfectly desirable, and you might say that they were simply anticipating a necessary amendment of the law. But it is much more serious than that, Sir, once the police start representing to the public that they have powers in law which in fact they have not got, then it is certain that the public will lose confidence in the police. We must be able, whether it is a question of firearms or anything else, such as power to take into custody or any other matter, that to rely upon the police; and the public must feel that, when the police say that they have legal powers, they have legal powers, and they are not making up powers which they have not got, in order to take short cuts to achieve things that they might properly consider desirable. I do hope, Sir, that the Minister will give us an assurance that this sort of thing will not be allowed in the future, the policemen representing to the public that they have powers at law which in fact they have not got.

I beg to support.

MR. SAGOO: Mr. Speaker, Sir, there is one small matter which has been exercising my mind and which I would like to bring to the notice of the Minister. In going through the streets of Nairobi I have come across certain gun smiths and firearm dealers displaying their sporting guns and high power air guns in the shop window. That shop window has only the protection of a plate glass. It has no burglar bars and has no heavy mesh. I feel, Sir, that that sort of shop window offers a great temptation to a criminal-minded person. I would however, like to admit, Sir, that those weapons are put in the window

in the morning and removed in the evening. Nevertheless, Sir, a brick or a heavy stone could be chucked into that window in a smash-and-grab raid. I therefore would like to suggest to the Minister, Sir, that before issuing a licence to such firearm dealers and gunsmiths their premises be inspected to make sure that those shop windows—and, in fact, their internal showcases—are made secure with burglar bars or heavy mesh.

Mr. Speaker, Sir, I beg to support.

MR. MANGAT: Mr. Speaker, Sir, I share the surprise which the hon. Member for Ukamba and my colleague, the Specially Elected Member, Mr. Slade, have expressed over the remark which the Minister made when opening this debate that the police officers had no power to take over the weapon even if they were satisfied that sufficient safeguards were not provided by the holder of the licence for its custody. During the last three or four years, Sir, reports have come to every Member of this House from the Indian community that many of them were deprived of their weapon when they handed them over the counter for the purpose of getting their licence, handed them over for the purpose of examination or for identification, for the confirmation of a number or the character of a weapon and the reply, "You cannot have it back." No reason was given, it seemed to, have been done simply because the licensing officer thought that the face of the man did not look very reliable or his turban was not wound up very neatly. It has occurred often and the reports are that when these events were brought to the notice of the licensing officer the reply used to be that it was within his discretion not to issue a licence. In the case, Sir, too, when submissions were made that a particular applicant really deserved it perhaps there was a relaxation, but it was done with a great show of special grace. It was not done because it was thought that the man was entitled to it.

Now, Sir, it is all very well to say for the African Members that self-protection should not be a ground for the grant of a licence. And they contend—except for Mr. Towett nobody seems to be interested in the reply—they contend that they are just as much entitled

[Mr. Mangat] to a licence as any other member of any other community. There is a proverb, Sir, in India which says, "a naked child may play with thieves", and I beg to submit that for the majority of the African people it is just like a naked child—they can play with thieves if they like—they have no danger. It is the property, the display in the shop, the goods in a store of an Indian which excites the Africans or people who are so inclined towards robbery, to commit these assaults. I think I can contend that not a single member of the Indian community has ever assaulted any African so far. He is just like the rabbit who was asked whether he would like to have some meat, and the rabbit replied, "For God's sake, leave mine alone." So the Indian would be very glad if he is left alone. Who is to say that he will assault members of the African community if he holds ten rifles? It is absurd to contend that the issue of firearms should be on the same basis for everybody. It cannot be, because the vast majority of the African community has nothing whatsoever which can attract any assault, while the Indians and the Europeans have a great deal which does attract assaults from miscreants. So far, Sir, it has been really the property of the Asian which has been coveted, but now—as the hon. Member for Nairobi West pointed out yesterday—there is a general hatred against the Indians for his very face. And I would contend that the Minister cannot simply get away with saying that the police will extend protection. The police are incapable of extending protection to the Indians simply because many members of the police force are not really worried as to the fate of the Indians. Every trader outside in the blue must have his own rifle. Does the Minister think that the man will willingly surrender his rifle? And does he think that he should dig a big hole and conceal his rifle? What is the use of a firearm if it is not handy in time of need? Does he wish us to put it in such a safe where the housewife loses the key and then you go about digging up his weapon? Surely, there should be some limit to the discretion of a licensing officer under clause 4 (b). How can one—an ordinary Indian—convince the licensing officer that he has been safeguarding that weapon? Even

if he brings ten witnesses to say that he conceals it every time on his body, even though he foregoes his bath for that reason, would that be considered a good safeguard? The Sikhs in India as well as many good Sikhs here wear Kirpans and they never take that weapon from their body even if they are taking a bath. I am sure that many Gujerati businessmen, if they had a pistol, would never put it away. They would keep it with them like a waterproof watch. So the Minister should not be very strict about safeguarding a weapon. The man who holds it, holds it because he knows that that is the only thing that will save his life in time of necessity. He cannot be indifferent towards it and I would like to ask the Minister how many Indians have lost their weapons during the last seven years. It may be that the European community having too many of them will probably be not careful enough to safeguard all of them, but an Indian who has acquired it with the greatest difficulty will probably guard it with his life. And I would oppose very strongly clause 4 (b) because a licensing officer is not a clairvoyant—he cannot possibly think what the safeguards are for keeping in custody this firearm. And it should be no condition on a person that he should satisfy a licensing officer that he is keeping it in good custody. The good custody is presumed when the man gets his weapon. It is presumed that he will keep it so.

And, Sir, African Members have said that in congested or populated areas there is no need for firearms. Even that is a misunderstanding. In Nairobi itself these days, River Road, Canal Road and Eastleigh are areas in which every street should be provided with certain firearms. Individually, they may not be able to qualify for them, but, collectively, in a street there should be four or five selected persons who should be entrusted with firearms who can, in times of emergency, come out with them because times are such that I can generally tell you, Mr. Speaker, that unless a certain section of the population is told that unwarranted assaults will not pay them and if they persist in assaulting peaceful citizens there will be retaliation which may result in firing, I am sure they will not desist from it. The Indian Elected Members, I understand, have already made representations to the Minister and

[Mr. Mangat]

I am sure he will give them to understand that he will look into this, but clause 4 (b) is not a proof of that assurance. He should consider that Indians throughout the Colony have taken the trade to the farthest corners along with the Union Jack, and both the trade and the Union Jack should be protected by issuing firearms to Indians. They are responsible citizens. Most of them have been here for many years—over 20 or 30 or 40 years—and it cannot be simply dismissed by saying that they might not be able to safeguard their property. I would ask the Minister to take out clause 4 (b) entirely and relax through administrative discretion the issue of firearms to Indians throughout the country.

MR. WLB: Mr. Speaker, Sir, there are a certain number of small quasi legal points which have been raised by hon. Members opposite with which I might deal. The hon. Member for Ukamba drew attention to the possibility of greatly more powerful air guns and, indeed, this is a very real danger. This is a matter which is very much under consideration and if the position became intolerable it might be necessary to propose amendments. But even so, Sir, I think that under the new proposed section 24 (1), which is contained in clause 14 of the Bill, the Minister retains power to deal with air guns and he can schedule certain air guns and make them require a licence. The same hon. Member, Sir, asked whether it was true that Africans are not allowed to carry air guns and it is true to this extent, Sir, that the Africans Arms Ordinance does prevent Africans in certain areas from possession of firearms or air guns without a permit, in addition, in the case of firearms, of course, to having the proper and necessary licence. That Ordinance, Sir, was enacted in 1918 and I am empowered to give the House the assurance that the Government will now look at this Ordinance and see whether it might not be possible, at any rate, to exclude arms which are dealt with by this Ordinance—and bring them all within the same ambit.

The hon. and gracious lady—Oh, Sir, before I go on to her, Sir, I perhaps should mention that air guns of a bore greater than .177 are prohibited from import into this country because a 22

air gun can be converted to firing lethal ammunition after about half an hour's work.

SIR CHARLES MARJHAM: Is the Member aware that you can buy a .22 air gun in Nairobi?

MR. WLB: I am assured by the authorities that you cannot, Sir, and we must leave the matter there, but we can explore it later if necessary.

The hon. gracious lady, the Member for Nyanza, referred to certain toy and alarm pistols which partake of the nature of real weapons and although their import and merchandizing is controlled at the moment by Emergency (Amendment of Laws) Regulations which were made to amend the Ordinance I am afraid I have to admit that the customs authorities have let certain of these through and they have been seen in shops; but the police have wherever they have spotted them done their best to remove them. The control which this Bill imposes is no more than the existing control and it will effect its continuance.

The hon. Member for the East Electoral Area, Sir, referred to the production of arms licences and suggested that people could not carry them on their person all the time. The new section 11 (1) which is contained in clause 6, specifically provides that when a licence is demanded it is to be produced at or before such time, at such place, and to such police officer as may be specified, and that makes it clear that you do not have to carry it so that it can be produced instantly on demand.

My hon. and learned friends, the Specially Elected Members, Mr. Slade and Mr. Mangat, both drew attention to clause 4 (b). I think, Sir, that the position is perhaps not quite what my hon. friend, the Minister, indicated. I think the police in the past have had a right to say that they would cancel a licence if they were not satisfied that the person who held the licence would protect his weapon.

What is now proposed to be contained in the new proviso—the addition to the proviso to subsection (2) of section 5 in clause 4 of the Bill—already exists in section 18 (3) in the Ordinance. That provision, which it is not proposed to amend, requires every person who has in his possession any firearm to take all reasonable precautions to ensure that it

[Mr. Webb]

is not lost or stolen and that it is not at any time available to any person not lawfully entitled to possess the same. The breach of that is an offence. Now, the proviso to section 5 enables a licensing officer to refuse to grant a licence to any person whom he considers for any reason unfitted to be entrusted with such a firearm and I think it is not unreasonable, if a police officer thinks that a person is likely to commit the offence under 18 (3), that he is not fitted to be entrusted with the firearm. I do not think, therefore, Sir, that the police have been perhaps quite so unreasonable in the exercise of their powers as has been suggested.

Sir, I beg to support.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (MR. SWANN): Mr. Speaker, Sir, I think perhaps it may be of help in view of the allegations which have been made of racialism, if I repeat once more the criteria which we use when a firearm certificate is issued: the need to possess a firearm. If there is a proven need to possess a firearm, there must be ability to use it. I do not think that that is unreasonable, Sir, because if you have a large number of weapons in a built-up area and people cannot handle them, the danger to the unfortunate by-standers is likely to lead to a very high mortality. If there is a proven need to possess and the ability to use a firearm, there must be proper arrangements for the weapon's safe custody. Now, I have the greatest respect for the Specially Elected Member, Mr. Mangat, but I must disagree with him whole-heartedly when he says that safe custody should not be a criterion for the issue of a firearm. You can put it in a hole, he said, and dig it up and it will take you too long. But, Sir, has the hon. Specially Elected gentleman learned nothing from the past years? You cannot get away from the fact, Sir, that in 1953, 643 weapons were lost or stolen and I would therefore submit with the greatest respect to the hon. Member that safe custody is vital. Now, this is not unreasonable, Sir. What is usually done in practice is that there is an approved form of home safe which, if the applicant has in his possession, he is issued with a certificate. Sir, I would hope to make clear to all hon. Members that there is no racial discrimination. The criteria are the same for all races and the point

which perhaps I should have mentioned when opening this debate, is that every unsuccessful applicant has the right of appeal to the Minister. I can assure hon. Members that I deal personally with all appeals for applications to obtain firearms certificates.

I would also inform hon. Members that in the six months since I have been Minister I have turned down, I would say, five times the number of European appeals than the appeals of other races, so that if I am showing racial discrimination I am showing racial discrimination against the European population.

I will not bandy words with my hon. and learned friend, the Acting Solicitor-General, about clause 4 (b), perhaps we could reach unanimity before we reach the Committee stage. I still think, Sir, that my brief was impeccable.

The other general principle with which I would like to deal which was brought up by a number of hon. Members is, I am in complete agreement that firearms should be issued more generously in isolated areas, where the owners do not live near a police station, than in the built-up areas. That, I agree, is sound common sense and I can assure hon. Members that this is one of the criteria upon which I act when I hear appeals. I am not so happy about large numbers of weapons in built-up areas, because as I have said with large crowds, however good the intention, it can be the wrong person who is shot. I can assure hon. Members that every appeal is dealt with by myself strictly on its merits, irrespective of the race of the applicant.

The hon. Member for Ukamba, Sir—I am not clear (perhaps we can take it up at the Committee stage), as to what distinction in the Bill one can make between rifles, revolvers and shot guns. I would merely say as a general principle that they are all weapons, which are all cause loss of life, and that they are all weapons, which are capable of being stolen; but if the hon. Member can think of any specific instance at the Committee stage, I will be only too happy to consider it.

I have also dealt with the question of country areas which the hon. Member raised and I have also stressed the fact that appeals do lie to the Minister himself. Now, I do very much sympathize

[The Minister for Internal Security and Defence]

with the hon. gentleman about the need for the control of air guns. I was, I may tell the House, shot in the knee by a horrid little boy a fortnight ago, when he was aiming at my dog. The hon. Member has my whole-hearted support, and I will certainly go into any question as to under what regulation we can deal with air guns because I most strongly sympathize with this point.

The hon. gentleman also raised the question of the firearms which are kept in store at Gilgil. Now, I am, Sir, I hope in the next fortnight, going to visit the arms store at Gilgil. Of course, all owners of weapons are at liberty to visit the store at any time and ensure that their weapons are kept in proper condition. I do not, Sir, know of one single case when a weapon has been disposed of without the authority of the owner. Again, Sir, I do not know of any case in which the owner has been prevented from removing the weapon from the Colony and disposing of it overseas. If any hon. Members have any instances of this nature, Sir, I shall be only too happy to go into it. And as far as I am aware, Sir, on the last occasion when I visited the store the weapons were kept in good condition and well oiled.

The next hon. Member, Sir, was the hon. Member for Central Province North. Again, I can assure the hon. Member that there is no racial discrimination, I noticed, Sir, that the hon. African Members have said earlier what a pity it is if Government does not reply to their points. What an equal pity it is, Sir, when our pearls of wisdom and wit in reply, fall upon completely empty benches!

My hon. and learned friend, the Acting Solicitor-General, has explained the point of Cap. 107, which has laid down that in addition to a firearms licence an African has to get a permit from his district commissioner before he can own firearms. My hon. and learned friend has already given the assurance that we will go into this matter and see, if in view of this amending Ordinance, the old Ordinance is still necessary.

The hon. Member for Central Rift raised the same point and I would again like to inform the hon. gentleman in *absentia* that we deal with these appli-

cations without discrimination of colour. I am afraid I cannot, off the cuff, give him the numbers of weapons held by the various races, but if he would like to put it to me in the form of a question, Sir, I will obtain the figures for him.

Poison arrows, Sir, do not come within the provisions of the Bill.

The hon. and gracious lady, the Member for Nyanza, I think both her points were clauses 14 and 16 and were dealt with by my hon. and learned friend the Acting Solicitor-General.

The hon. Member for the East Electoral Area raised the question of the Chief Licensing Officer. We have not fixed his exact pay at the moment, Sir, but he will be approximately—I say only approximately because I do not want to be accused later of misleading this House—the equivalent of a superintendent of police.

He raised the question of the removal of the licensing officer from Mombasa. It is quite true that the officer was removed on the grounds that there was not sufficient work for him in Mombasa, but I will certainly go into the question if there is not sufficient work for him and if he would be justified in re-posting this officer to Mombasa.

He also raised the question of gun-bearers on a shooting *safari*, Sir. They are exempted from the provisions of the Bill in the main Ordinance by subsection 7 of section 4, and they are not, therefore, in the same category as the licensed servants of the auctioneers, warehousemen and carriers.

Particular areas, Sir, areas of particular danger, that naturally would come into the question of dealing with applications, both in general and in specific cases of appeal. As I have said, Sir, I accept the general criterion that applications in isolated rural areas have a far better case than those who live in close proximity to a police station or in towns. If there were particular conditions, particularly dangerous conditions, naturally, Sir, that would be taken into consideration.

The hon. Member for the Coast Rural again raised the point of Gilgil. I have dealt with that, Sir, in reply to the point raised by the hon. Member for Ukambani. If he has any specific instances.

[The Minister for Internal Security and Defence]

once again I hope that he will read HANSARD where irreparable weapons owned by Africans came to grief, if, Sir, he will give me the details, I will certainly go into individual cases with him.

He raised the question of hunting licences, Sir, which I am afraid does not fall under my Ministry or the provisions of the Bill.

He also raised the question of protecting crops and protecting property. That, Sir, would come under the criterion which I have already given. "(b) the need to possess a weapon", and obviously if your crops are liable to damage by game, that in fact would be one of the many cases in which we licence people to own shotguns, in order that they can safeguard crops.

The hon. Member for Kitui, Sir, raised the question of the Veterinary Department and I can only refer him to my hon. friend the Minister for Agriculture.

He also raised the question of carrying arms in public places. Well, the law is that if you are licensed to carry a firearm you can carry your firearm wherever you like, but if you use it to the danger of the public or commit an offence you will be thereafter charged by the police and I would have thought that this law would have covered the question.

The hon. and learned Specially Elected Member, Mr. Slade, his points have, I think, been dealt with by my hon. friend the Solicitor-General. I will certainly go into the point raised, I thought very well, by the hon. Nominated Member, Mr. Kirpal Singh Sagoo, about the shop windows. I will certainly go into the question with the police, and if he will give me the names of the businesses in question it will be a very great help to me.

~~I think I have already dealt with the main points raised by the hon. and learned Specially Elected Member, Mr. Mangat. As I said, I can assure Members there is no racial discrimination in this matter, but I must once again beg to differ about the necessity for safeguarding firearms. Unfortunately, Sir, there have been cases in which firearms have~~

been handed to evil-doers to the great detriment of honest citizens thereafter.

I think, Sir, that I have dealt with all the points raised by hon. Members in the course of the debate. Mr. Speaker, Sir, I beg to move.

The question was put and carried.

The Bill was read the Second Time, and committed to a Committee of the whole Council tomorrow.

The Excise Tariff (Amendment) Bill

Order for Second Reading read.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir, I beg to move that the Excise Tariff (Amendment) Bill be now read a Second Time.

Hon. Members will remember, Sir, that earlier this year the Excise Tariff Amendment Ordinance was passed which imposed an excise duty on spirits on a day to be appointed. That date has not yet been appointed and, in fact, it will be appointed at such time as spirits are being generally manufactured and at the same time the East African Excise Management Act which has also been amended to make provision for this will be brought into force. But, Sir, in order to be prepared for when this may happen, it is necessary also to make provision now for the remission of duty on spirits used for medical and scientific purposes, for approved industrial purposes and in the manufacture of specially de-natured and methylated spirits.

It is proposed in this Bill that this shall be done and the amendments like the earlier Excise Tariff Amendment Ordinance will be brought into effect on the date on which it is decided that it is necessary actually to impose an excise duty. That, of course, will depend on when dutiable spirit has been produced in East Africa.

I should say, Sir, that the reliefs from excise duty contained in the Bill before the House are at present enjoyed by the persons concerned because the duty is not yet in force and control is exercised under existing legislation. Both Uganda and Tanganyika—

AIR COMMODORE HOWARD WILLIAMS:
Is there a quorum?

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): We are one short. Ring the bells.

It is all right we have a quorum now, you can go on speaking, Mr. Mackenzie.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Mackenzie): I was saying, Sir, that both Uganda and Tanganyika have enacted similar legislation to this. There too, it will be brought into effect as soon as it is necessary to do so and, as I said at the beginning, there is a need for this legislation which is connected with the proposals which have been made for the local manufacture of surgical spirit. Until that spirit is being manufactured there is, of course, no need for a duty.

Sir, I beg to move.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan) seconded.

Question proposed.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

The Crop Production and Livestock (Amendment) Bill

Order for Second Reading read.

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. Mackenzie): Mr. Speaker, I beg to move that the Crop Production and Livestock (Amendment) Bill be now read a Second Time.

Mr. Speaker, I would like to say a few words to amplify the Objects and Reasons of this very short amending Bill.

Mr. Speaker, although section 5 of the Crop Production and Livestock Ordinance makes provision for the confiscation of any crop or livestock in respect of which an offence has been committed. It makes no provision as regards the effect of confiscation when such an order is made. On this point the Chief Justice has commented that there has been a considerable variation in the interpretation by magistrates of their powers to order the disposal of confiscated stock and he is doubtful of the legality of certain orders which have been

In the circumstances, Mr. Speaker, it is proposed to amend the Ordinance by including in it a provision similar to that made in the Animals Diseases Ordinance, whereby when an animal is forfeited it may be slaughtered, sold or otherwise dealt with, and in fact dealt with as the court shall direct; whereby when an animal is ordered to be sold, the court may direct that the proceeds or any part of the proceeds of the sale shall be paid to the owner. In the absence of such direction, the proceeds of the sale would be paid into general revenue.

Therefore, Mr. Speaker, hon. Members will appreciate that this is a small amending Bill to legalize a position.

Mr. Speaker, I beg to move.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan) seconded.

Question proposed.

MR. ARAP MOI: Mr. Speaker, Sir, this is a very vexatious Bill. The Mover, Mr. Speaker, when he moved this Bill, did not stress the fact that the sufferers through the implementation of this Bill are the African pastoral people. I have once suggested in this House, Mr. Speaker, that the Africans whose livestock, cattle, trespass into Crown land or European farms are confiscated and they are taken to court and the magistrate rules that such animals or such livestock should be sold and the proceeds sometimes may not go to the particular owner of the livestock. I have made it quite clear, Mr. Speaker, that it is equally important to consider the owner or the owners of the livestock concerned. I have read through the Ordinance itself and in the clause 4 it enumerates or lists items or things which are necessary in this Bill. The Bill says that it limits the number of stock in a certain area and if at any time any stock owners are found to have an excess of such stock they will be convicted because of this Bill.

Mr. Speaker, although this Bill may look rather a mild piece of legislation, I consider it to be very dangerous because it affects the Africans mostly.

The magistrate, Mr. Speaker, charges either on section 5 of this Bill or section 46 of the Ordinance and the magistrate has two alternatives.

(Mr. arap Moi)

46, whichever suits him and I would urge the Government, Mr. Speaker, to think very seriously as to whom are going to suffer as a result of the implementation of this Bill. The man who drives his cattle across to a certain area and because the area is found to be an area which is under quarantine because of foot-and-mouth disease, the Government sells the cattle without giving the owner permission to sell the cattle. As the result of a court case and therefore, Mr. Speaker, it is very important that while amending this Bill the Government should think very seriously, not only to allow the magistrate to sell the livestock, but also to decide the amount which should go to the owner of the cattle. Sometimes you may find the owner of the cattle not coming forward and fined because his stock has crossed the border and the Government tells the police station after a day or two they are sold, and Government takes the proceeds. Therefore, Mr. Speaker, I feel that the Bill, as far as I am concerned, is really dangerous. In view of the present development in African areas such a Bill should be reviewed to make it flexible so that the stock owners are concerned understand the implication rather than impose them on such a Bill.

Mr. Speaker, it is also suggested in this particular Ordinance—and the Minister did not really elaborate as to the other items in this Ordinance that the number of livestock in a certain area, if they are found to be undesirable or useless, this Bill will be applied and force the owner to sell his livestock and have a smaller number in an area which has been declared capable of holding such a number of livestock, Mr. Speaker, I should like the Minister to elaborate and give more facts as a result of passing this legislation. Mr. Speaker, I beg to oppose it.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I would draw the attention of the hon. Member to the fact that this is a small amending Ordinance dealing with only one section of the principal Ordinance and, therefore, strictly speaking, it is out of order to embark on a debate bringing into question all the other provisions of the principal Ordinance and would, there-

fore, be in the advisability or not of bringing in this particular amendment.

MR. TOWETT: Mr. Speaker, Sir, with your enlightened exposition on this matter, I would like to confine myself to the matters very pertinent to this Bill.

I do not like under clause number 3, I do not like what has been put down: "May in addition to or in lieu of imposing any other punishment authorized by law, order that the crop or livestock in respect of which a breach was committed, or any part of crop or livestock shall be forfeited."

Mr. Speaker, Sir, as I always say, our Government needs a complete overhaul. Why should this Government fine me because I have committed a breach of some law, because I look, say, maize from Kericho to Central Nyanza District. I am fined for contravening the law referred to, why should it at the same time force me to forfeit the whole lorry load of maize? If I am fined, Sir, because of contravening a section in the law, that fine should be sufficient and I should get back my crop whether it is maize, meales or whatever crop I have been trying to transport.

So, Sir, I oppose this amending Bill because I do not believe that it is good to fine me and, at the same time, confiscate or force me to forfeit the crop. I do not see how the Government looks at the problem. How can you fine a man and take away his life as well? If you fine a man you do not need to take away his life. So, in this respect, if you fine me, there is no need to take my crop away. It is not good logic.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): The principle of confiscation is provided for in the principal Ordinance.

MR. TOWETT: Mr. Speaker, Sir, this is the forfeiture of the crop in addition to, and that is how it is put so I oppose. I do not want to prolong this short story. I oppose this amending Bill and I think everybody who calls himself logical in mind should also oppose it.

MR. HASSAN: Mr. Speaker, I would like to ask the Minister on one or two points to tell us what steps he is taking to find out whether the crop and the livestock belong to the person who has

[Mr. Hassan] been fined in a court of law. I know that Africans have livestock which do not belong even to the owner of the house, but it belongs to the whole family. The same system, I believe, is involved so far as the crop is concerned. Only the master of the house is there but the crop is planted by the wife and the children so that if the fine or confiscation of the crop and livestock is resorted to by the court, what steps have been taken to protect and see that only a portion of the livestock and the crop which belong to the man who is fined are confiscated?

MR. BECHGAARD: I propose to deal briefly with legal points raised on the other side. The Member for North Rift raised two questions. I think the first one related to the possibility that the stock of an absentee owner might be liable to confiscation because he did not come forward to claim it. Confining my answer to the amending Bill now before the House, my answer is simply that confiscation can only result from conviction, and conviction cannot take place in the absence of the owner, so any liability for forfeiture in those particular circumstances does not arise under this Bill.

The second point is that he seemed to imply that forfeiture was automatic, but it should be noted that in the Bill as worded the discretion is left entirely in the hands of the magistrate to suit his decision to the particular circumstances. The wording is that he may order and he can adjust that to the circumstances of each case. In a bad case he might, or he might not, order the confiscation of the entire stock. In trivial or formal offences he would, no doubt, make the necessary adjustment and order that the larger proportion of the proceeds should be paid over to the true legal owner.

I think those are the only legal points that have arisen. I beg to support, Sir

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I feel that no point, if any, maybe perhaps one, other than legal points have been brought up. The hon. Member for North Rift did talk about clause 4 in the original Ordinance. I appreciate that is outside the scope of

this Bill, but if he should care to talk to me on clause 4 at any time, I am quite prepared to discuss it with him.

The point raised by the hon. Member for the Southern Area—I would like just to repeat what my hon. colleague behind me has said, that it is not necessary that he would have to forfeit his whole crop. This entirely depends on the magistrate, and Mr. Speaker, in answer to the hon. Member for East Electoral Area, again, if these type of cases come before the magistrate it is entirely up to the magistrate, and it has nothing to do with me as Minister. The whole of this very little amendment is nothing but a legal amendment and has very little to do really with agriculture.

I beg to move.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

MOTION

AFFILIATION ORDINANCE: CALL FOR REPEAL OF

Debate resumed from 22nd December, 1959.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): This Motion was interrupted—discussion on this Motion took place on 22nd December. It had been moved by the Mover, Mr. Towett, and Mr. Muliro was speaking to it as Second, and you have still, Mr. Muliro, some 12 minutes at your disposal if you so desire.

MR. MULIRO: Mr. Speaker, Sir, I was, when the Council adjourned, seconding this Motion by my hon. friend the Member for Southern Area.

Now, I had just drawn the attention of the House to one factor, that if we are to have an Ordinance of this nature, I do not suggest that women are very unscrupulous, but I was suggesting at that time that there might be some girls who would find a cheap living by getting illegitimate children from different people.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) left the Chair]

[Mr. Deputy Speaker (Mr. Bechgaard) took the Chair]

[Mr. Muliro]

Well, it is to some extent. It would be an abuse of an Ordinance like this. The issue which involves a real serious consideration is the question of the illegitimate children, who are, as a result of this form of union. The illegitimate children, as it is anywhere in the world, are always having some stigma. No child wishes to know that he is illegitimate. The father is living somewhere else, and knowing only the mother. It is very pitiful, but it is a universal factor which cannot be denied anywhere. There is no country in the world where there are no illegitimate children.

The Minister for Local Government, Health and Town Planning, who has the Department of Social Welfare under him, should make provision for the adoption of children of this kind. If children of these unions are adopted they will be given a home, and their new adopted parents will look after them, rather than be given the stigma. However much the Government might say that this Ordinance helps these illegitimate children, in fact, this Ordinance only is going to create more psychological cases which will be subject in the future probably to some form of neurotic cases. I would emphasize that an Ordinance of this kind be scrapped off the record, and allow the normal African custom to work. But many people who moved this Bill here before, and who led to its acceptance by the Government, take the question of the children very sympathetically. They say that these children should be catered for. That the father of the child must maintain the child until it becomes of a certain age. But there is no guarantee in any way under, probably, the same law which will guarantee that the money which the supposed father of the child pays goes to the child and, therefore, actually, the protection of the child is not the protection of the child, but it is giving a livelihood to a young woman who might not care about the child. Many cases of this kind, Mr. Speaker, have been known everywhere. I have met women with illegitimate children. They do not care for them at all. Women who are loose, who normally get children like this, would seize the first chance to get out of the home and leave that child there to the poor grandmother and not even care about looking after it, and therefore,

we, in this Council, are saying that this money has got to be used for these illegitimate children, but we seem to be deceiving ourselves. Unless the same Government is going to make provision, or an amendment to the same law, to see how to administer that, I would have said it would have been much better, in fact, if every illegitimate child was picked up by Government and placed in a special home, where they are to be adopted, or, as long as the child is not adopted, it stays in that place and the supposed father of that illegitimate child pays the money and the State feeds those children properly, but if anyone would argue that the money should be given to the woman and the woman will look after the child, I do not believe that. That is going to lead to an abuse of this Ordinance.

This issue is not only being viewed very seriously by African Members, but it is viewed very seriously by the African community, and also the churches in Kenya are now very worried about the administration of an Ordinance of this nature. It would be much better to leave the thing to the ordinary traditional customs or the child welfare societies, and if a woman who has got an illegitimate child does not want to accept the custom as it is, she would be advised, in fact, better advised, to get her child adopted, and that would be the only remedy to a position of this kind.

I do not want to argue very much on this. I know it is a serious issue which is before the House, but, Mr. Speaker, I beg to second this very strongly.

Question proposed.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Deputy Speaker, I have listened to the debate so far with a good deal of interest. This is, if I may say so, Sir, not a subject within my Portfolio, but the Minister for Local Government has fathered on me the task of speaking to this Motion.

The hon. Mover when he was speaking to his Motion made the point that there had been a very general discontent amongst the Africans as the operation of the particular Ordinance, and I would like to quote him a certain set of figures and statistics which, I think, will show him that in fact the operation of the

[The Minister for African Affairs] Ordinance has been very largely confined to the urban areas only. He himself made a great point in his speech that it was the Africans in the rural areas who were likely to suffer as a result of the operation of this Ordinance. Sir, in the Nairobi Extra-Provincial District the number of cases filed in the African courts is 23, of which 15 have been heard, and in the cases heard judgment was found for the woman plaintiff. Of the 15 cases heard there were nine appeals to the District Officer's court, and of those nine appeals four have been heard and in each case the judgment of the lower court was upheld. To date there have been no applications to the Court of Review. The orders made in each case were for monthly payments of Sh. 40 a month for 14 years. This figure was arrived at after careful thought and study of the Statistical Department's figures, and it is considered to be the amount which it costs to maintain a child in Nairobi. As a matter of interest, Mr. Deputy Speaker, one couple got married after the order was made.

Mr. Deputy Speaker, in the Nyanza Province there have been no cases, and that applies also to the Rift Valley Province, to the Southern Province, but in the Coast Province six cases have been filed, and three cases have been heard, and all these three cases concern the Mombasa court. In the Central Province nine cases have been filed, two in Fort Hall, three in Embu and four in Kiambu, but none of these cases has, as yet, been heard. That is so far as the African courts are concerned.

In the Resident Magistrate's courts, the figures so far are none in Nairobi, one case filed in Kisumu, none in Eldoret, two cases filed in Nakuru, of which one is heard, none in Mombasa, one in the hon. Mover's own constituency at Kericho, which has not yet been heard, and one at Machakos. So, Sir, I contend that in fact the words used that there was general discontent over the operation of the Ordinance cannot be accepted. There have been very few cases filed, and very few cases heard.

The object, I think, Sir, of the Ordinance, and no doubt the hon. Specially Elected and learned Member, Mr. Slade,

will correct me if I am wrong, the object of this Ordinance was largely to deal with the problem in the urban areas of illegitimate children, and to provide a remedy for the women who bear those children. But there is no doubt that in the operation of the Ordinance certain difficulties have arisen, and might arise in the future.

One of the difficulties that might arise, and this applies almost entirely to the rural areas, is the effect that they may have on African customary law. For instance, does a father pay a maintenance order under the Affiliation Ordinance, and is he then still liable for damages under African law and custom to the girl's father? And I think that that is something that will have to be considered in connexion with the application and operation of the Affiliation Ordinance. And secondly, there is, of course, the possibility—indeed it has happened, as I said earlier on—that the plaintiff and defendant in a case under the Affiliation Ordinance may get married, and should, or is there provision, in fact, under the Ordinance for the order to be cancelled? And what happens again, Sir, if the mother refuses an offer of marriage which has been made subsequent to an order under this Ordinance? There is also, no doubt, Sir, that there may be cases in which the more unscrupulous members of the community will try and use the Ordinance for their own benefit. It is always possible, Sir, that a poor father will make an arrangement for an unmarried daughter to entice some rich neighbour with a view to getting herself with child by him for the sole purpose of obtaining cash relief, and, of course, Sir, in certain districts, and I believe it is the case in the hon. Mover's district, this would have the added advantage to the daughter of having proved her reproductive abilities. And this, naturally, would enhance her chances of marriage.

For the reasons, therefore, Mr. Deputy Speaker, that I have stated, the Government does consider that the operation of this Ordinance is not entirely satisfactory, and it feels that possibly some review should be made. And I am therefore, Mr. Deputy Speaker, proposing an amendment to this Motion, which, with your permission, I will read out. I propose that all the words after the words

[The Minister for African Affairs] "the Government" in the original Motion, be deleted, and there be substituted in place of the words left out the following words: "... to review the operation of the Ordinance in relation to Africans and in the light of such review to introduce amendments to ensure the courts administering the Ordinance shall, whilst making adequate provision in the interests of illegitimate children, pay due regard to native law and custom."

Sir, I beg to propose the amendment.

THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (Mr. Blunt) seconded.

Question proposed.

THE DEPUTY SPEAKER (Mr. Bechgaard): Under Standing Order 62, I consider that the matter of the amendment is not conveniently separable from that of the original Motion, and therefore the debate will proceed on both.

MR. SLADE: Mr. Deputy Speaker, Sir, I support this amendment. In the first place the substantive Motion suggests that the Ordinance is concerned only with Africans, whereas, of course, it is concerned with children of all races, and I regret to say very much needed for the benefit of children of all races.

Now, Sir, this Ordinance took its origin, as the Minister for African Affairs graciously acknowledged, from the Report of a Committee of which I was chairman some years ago. That was the Committee set up to look into all questions of legislation affecting children and young persons, and to recommend possible amendments of the existing laws. We made our Report in 1952, and it is to be seen in the Library of this Council. I have not thought it necessary to drag it out and quote large sections from it, but it is there for any one to read, and on this particular subject, we recorded a large volume of evidence as to the need for legislation of this kind, which after all only follows the law which has existed in England for more than a hundred years. As I say, it is for the benefit of the children of all races. In particular we recorded evidence of the great need among the African community in townships where the persons concerned—the mother and the supposed father—have

already become to a great extent tribalized, and out of reach of the customary sanctions. In the end we recommended that there should be this law; that there should be great caution in applying it to Africans generally; but that it was certainly needed for Africans in townships immediately.

That, Sir, I still feel sure, in the light of further experience of work in the field of social service, is true. There are many women in Nairobi today—African women—who have illegitimate children whom they simply cannot feed properly without some assistance from the father who has been responsible. In many cases, they arise from a sort of state of quasi marriage where man and woman have been living together for quite a long period as if they were married, but in fact not married, and one day the quasi husband takes it into his head just to leave the woman, and she would have no redress for the protection of her children unless there was a law of this kind.

Now, it must be made absolutely clear, and I think it has been on other occasions as well as today, that the sole purpose of legislation of this kind is to make provision for children who arrive in the world through no fault of their own, and must be cared for. Who is to care for them if we have not yet a welfare state? It can only be the mother in the first instance who has the legal responsibility; but in the second instance, the father who has the responsibility for the arrival of the child.

Now, as I say, this law is a law of England of many many years standing. A law which we want to apply to Europeans, Asians and Arabs in this country following the precedent of England. And I would have expected that in this matter, as in other matters, the African community would not want to be left very far behind. They would not want to be excluded from the general law covering any aspect of our social conditions in this country. Yet I do recognize that they have at present certain customary laws which operate particularly in the rural areas and which will not die just tomorrow, however desirable it may be that provisions of this kind, which are designed more specifically for the welfare of the child, should replace the existing laws which are designed for

[Mr. Slade] other things such as compensation to the father. We must move slowly towards that end, and in the meantime must not create too much confusion.

So I welcome, Sir, the proposal that the Government should now review this law in its application to Africans, and I hope that the result will be that we will find the law still applicable in full force to Africans in townships, but applicable in some modified degree to Africans in rural areas always so as to ensure that some provision is made somehow for the child concerned. It is not enough that the girl's father should receive damages. That will not feed the child. The child must be fed and clothed, and educated where possible.

There was one important point made, by the hon. Seconder. He said that under the law as it stands, there is no guarantee that, when an order is made, the money will in fact be used by the mother for the benefit of children. It is most important that the money should be so used, because most definitely the payment is not intended as a benefit for the mother or a reward for her immorality. It is intended purely for the maintenance of the child, and if any provision can be made to make more sure that any moneys paid under this law go to the benefit of the child, then we would like to see that provision. There is some provision already. I know, in the law as regards lump sums and the creation of trusts for the benefit of the children concerned. But as regards ordinary monthly payments, I think the hon. Seconder is right, that there is not at present any such provision in the law.

I beg to support, Sir,

MR. ODINGA: Mr. Deputy Speaker, Sir, I rise also to support the amended Motion because I feel that we really need such a Bill which will also take into consideration the African customary laws.

Mr. Deputy Speaker, before I go very far, I would like to explain very briefly how the African marriage to more than one woman came about. It did not come about simply because the Africans had the pleasure in having more than one woman. They had very good reasons for it. They were only trying to solve this

question of the illegitimate children. They said that if a man could not satisfy himself with just one woman, and stick to one woman alone, then he goes hunting for other women, if he conceives children with those other women, then it is better for him to bring those women to live together with him and look after them and their children. That was the reason.

Now, if that man again was not satisfied with two women and went about again playing and got another woman with child, then he was forced by the elders to bring to his home that woman and look after her also with her child.

Mr. Deputy Speaker, through these African customs, the Africans were able to keep or discourage unnecessary illegitimate children among them. In actual fact it is very, very rare to find amongst the African community as I know them at the present moment illegitimate children. They are there, but they have got those people who have taken them into their homes and now regard them as their own children. They will not discriminate nor will they say that "this child was not mine"—they are completely theirs and they are looking after them in their own homes. I therefore think that that particular customary law should be observed, although many people may say that having more than one woman is not in conjunction with the present civilization. If it is not in conjunction with the present civilization, then I think that is one of the discrepancies of the present civilization and should be rectified, because civilization cannot be all complete in every way. There are always shortcomings in everything and I think that is one of the shortcomings of the present civilization.

Now, Mr. Deputy Speaker, I have got one other point, when I read this Affiliation Bill at the very beginning, I thought that it was the beginning of releasing so many African women to be loose and to move about in the towns, particularly because we have given them a very lucrative business to go around and search for men and then they will not bother to get married but they will just stay single and somebody will be paying her for her living, and I think it was most unnecessary and deplorable.

[Mr. Odinga] I will just explain a little bit what we used to do. In our custom the women and the men were allowed to move about as they liked and they mixed very freely everywhere, but of course everyone was very careful because they knew that they had to observe strictly their moral standards and live up to them because they were told that if they made a mistake or debased somebody's girl who is still a virgin, then he would be forced to marry, or if not to marry then to pay very heavily. Because he would have been the first man to get that girl out of her virginity and as such he would have to pay something or his family would have to pay very dearly for it. The girl's parents would also punish the girl by telling her that having messed herself, she could not choose whom to marry, but they would help her to find somebody who will marry her and take her away. In that way, they would try to marry her to anybody who would look after her. I think this Bill when amended should also take that custom into account.

The women must be encouraged to get married. We should not encourage them to live independently in the cities. Of course, there are some women who work in the cities and when they are working that is a different matter, but immediately she gets pregnant then she should get married and she should no longer live alone, because by living alone in the city she might encourage some other women to be loose.

Mr. Deputy Speaker, I beg to support the amended Motion and I hope that the Government will not delay bringing about the necessary amendments.

MRS. HUGHES: Mr. Deputy Speaker, I really was extremely interested in the last speaker's remarks about tribal traditions. I have learnt quite a great deal more about it now, and it is the breaking down of these very interesting tribal customs that has caused, I believe, the necessity to bring the African women into this Bill. I believe that it was originally intended that this Affiliation Bill should apply only to one race—the Europeans out here. But a year or more ago I was approached by a number of African women who came to me in very great distress indeed because it was the breaking down of these tribal traditions,

the result of which the illegitimate children were not provided for at all, and they asked me to see whether we could not get the African women included in this Bill in order that they would get some form of maintenance and finance for the upkeep of these children.

Sir, there is only one more point that I do want to make on this Motion. The whole idea of this Ordinance was that it should be a non-racial Ordinance, and the African Members are always clamouring for a non-racial attitude in any Bill or behaviour in this Council. Sir, we need very badly protection for children—all illegitimate children—in fact I would go so far as to say that in many instances I do not think that this Bill does go far enough to protect them from fathers who desert them and then leave the Colony, and I hope that when the Minister reviews this Ordinance that he will not only review the effects on the Africans, but that he will also consider other clauses as well.

Mr. Deputy Speaker, I beg to support the amendment.

MR. MURTERS: Mr. Deputy Speaker, I also support the amendment which has been proposed by the Minister. While supporting this amendment, however, I would like to draw his attention to something which I think is missing in the Ordinance as it stands today, and that is what I would describe as the woman's character. I think it is important that the character of the woman should be taken into account if the woman applies to the court for an order. I have seen in the Press, whether that is correct or not, that women can go to court up to ten times bringing in ten men, and I do not think that that woman should be paid a single penny, but the children should be taken away from her and put in an orphanage and paid for by the fathers. I think it is most important—this question of the character of the woman.

While I agree with all the other speakers, it is also true that in any society there are always customs and laws to look after the children—or unfortunate girls—as they were known in the African society.

The woman who is suing a man for the maintenance of a child may have met that man only once—possibly in the

[Mr. Muchura]
streets—but she may have taken a liking to him and thought that he had plenty of money, and then she can say that is the man. It is very difficult, and it may be even necessary to call for medical evidence to prove that he is the father.

The Minister has given us the figures, and we find that it is mainly in the towns. Why is it mainly in the towns? Is it not mainly from these women who are living more or less on their wits? Is it not because these women will grab any chance to earn easy money without sweating for it? Are we trying to immortalize the whole of the country by encouraging this easy money.

Mr. Deputy Speaker. I think the matter of the character of the woman must come in somewhere in the Ordinance.

Now, as to the question of African tribal customs and so forth, I think that it is very clear, especially in my part of the world, that the child always belongs to the man, and he or she will not fit in anywhere. It varies in different parts of the Colony. I know, but on the whole the child is primarily considered to be the man's child, and I think that when the Minister comes to review this he should try to take that into account because as the hon. Member for Central Nyanza said, the first question was: "Are you going to marry this girl?"—it was usually a girl, and not a woman with three or four other children, and this should also be taken into account when the Ordinance is being reviewed.

The definition of a single woman in the Ordinance includes a married woman who is living apart from her husband. Do you realize, Mr. Deputy Speaker, that in fact, in old Africa we never had divorcees. Is anybody aware that amongst the Africans it does not matter how long they may be separated, the children and the woman wherever she may be—if she happens to die will be carried to the original husband's home and buried there. Those were some of the customs.

Now, it says here, "living apart from her husband". Why is she living apart from her husband? Irrespective of whether she wants to become a prostitute she is still eligible! What about the Guardianship Bill? A single woman should not include a married woman

living apart from her husband irrespective of the reasons for doing so. Is the husband sometimes not entitled to the guardianship of his children of that marriage? Why should they come under an affiliation bill? Are we trying to immoralize this country or are we trying to raise the moral code? We must get some of these young people away from the places where they will be living with their so-called mothers in conditions and circumstances which amount to nothing but a school for robbers.

I very strongly object to the payment of moneys to women of that character and I strongly suggest that—I mean there are cases, say, of girls from school, school mistresses and such cases where actually the men are in the wrong for misleading these innocent girls probably under pretence of marriage. There, of course, I do not think any African would quarrel with the payment as we had to deal with such cases in the past. But to give money to a woman with six, seven, eight, nine or ten children and all the different men paying sums of money every month I think we should really be heading for trouble.

Now that the Government has said that they will review this Ordinance, and I would like to stress once again that the question of the character of the woman must be taken into account, and also that under the old customs, the child belongs primarily to the man and this should be taken very seriously, and of course the definition of a single woman should be re-defined or at least the married woman be deleted and defined as anything else, and also there should be more security to see that the money should be spent on the child as it is supposed to be.

The last thing I would say is that the Ordinance as it stands from other angles, and the Minister has already told us that in one case the couple got married and so solved the problem of the affiliation order. I would suggest that in most places where the customs come in, and they vary from place to place and district to district—and it was the Minister. I think, who said, or one of the speakers. I cannot remember who—said that they sometimes live as man and wife for a long time until eventually the man decides to abandon the wife and the children. I do not know, but I have also

[Mr. Muchura]
heard it said that African marriages are not marriages. In the eyes of the Europeans but are just living together with a woman. When it comes to customs, that must also come in because when an African says, "This is my wife", according to custom, she is his wife and the process of the dowry system and the various negotiations have taken place, but there has been, of course, no registration of the marriage as such.

Therefore, Mr. Deputy Speaker, I would recommend very strongly that the Minister should take into account the character, the various customs and the fact that primarily the child belongs to the man and that these women with four, five or six children should not be given any more money for their pleasure, but if the children cannot go to their putative fathers, then they should be sent to orphanages or something like that, otherwise we will be creating a school of robbers and we will have difficulty in the future in dealing with these people.

I beg to support.

MR. TOWETT: Mr. Deputy Speaker, Sir, I will confine myself to the amendment. While stating that I should welcome or agree to accept the amendment, because it will be sheer obstinacy to say "No" to the amendment when I see that everybody on this side of the House is welcoming the amendment, so, Sir, I welcome the amendment.

MR. WEBB: Sir, since you ruled that the amendment and the original Motion were not severable and since the hon. Member for the Southern Area moved the original Motion, then has he the right to speak on the amendment?

THE DEPUTY SPEAKER (Mr. Bechgard): Under the proviso to Standing Order No. 62 "any Member who has already spoken to the Motion may in speaking to the amendment speak only to any new matter raised thereby".

As long as the Mover confines himself to the amendment he is in order.

MR. TOWETT: I was aware of that, and now I would like to confine myself to the amendment only.

While accepting this amendment by the Minister for African Affairs, I would

like to ask him to assure me that he will take into very serious consideration the points raised by the hon. Member Mr. Muchura, particularly concerning the married women.

[Mr. Deputy Speaker (Mr. Bechgard) left the Chair]

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) resumed the Chair]

So, Mr. Speaker, I accept the amendment.

Question that the words proposed to be deleted be deleted put and carried.

Question that the words proposed to be inserted in place thereof be inserted put and carried.

MR. OLE TIPIS: Mr. Speaker, I feel that this is one of the subjects which usually do not fall within the tone of my usual speeches, but all the same it is up to us to try and put things right or try to help the community in which we live, or the country for that matter.

Personally I am very grateful that the Government has this afternoon moved an amendment which I believe is quite acceptable to the Opposition side of the House for the first time and I hope that this is a very good sign and I hope it will continue.

Now, I do not want to make any fuss about the Affiliation Bill. We are all concerned here. We have men; we have women; we have some sons and daughters; everyone of us is concerned, directly or indirectly. The point is that as far as I can view the Affiliation Bill as it stands it entirely cuts across a number of the customary laws and customs, and as such if no modification or amendments, if no modification or amendments, if drastic ones too, are made then it will affect the entire African community, if affect the entire African community, if I may be a bit racial. It is all right bearing in mind from the Minister that the areas mainly concerned are the urban areas, but we must also bear in mind that the big urban areas have always a very big influence on the rural areas, because if, for instance, a young boy cannot look after himself in the reserves then he knows there is room for him in the urban areas he will always try to come in. The same applies to the girls. We heard the other day when we were debating the Vagrancy Bill that some of these

(Mr. Ole Tipis)

people who have no reputable means of livelihood will be sent back to their reserves. Now, I am just beginning to wonder whether by having a Bill of this nature we are not really encouraging our young girls from their reserves to come in great numbers into the towns where they know that once they can play about and go to the court and if they win the case then of course they are assured of at least Sh. 40 a month without sweating for it. It is really a difficult situation.

I do not know how the House will view my remarks over this debate but I do not usually have the idea of beating around with words, and as such what I am going to say, Mr. Speaker, is this: that when you have these loose women in our towns who are not employed at all they have no reputable means of livelihood. At the same time you go and say, "All right for the men: we can send them back to their reserves." But why not clean up this town and send these prostitutes back where they will be regarded as a disgrace to the family from which they originally ran away from. You can control them that way.

Of course I know the problem will always arise when you have quite a number of unmarried men. That is a difficult question, I know; but all the same if you can clear these undesirable characters out of the towns we will have solved the problem. It is rather a difficult one but if we believe in giving the courts power to order a man to pay £2 a month to maintain his illegitimate child then of course you must also take into consideration the amount the ordinary African pays under customary law as a dowry. In most tribes I think that three or four months payment for maintenance of an illegitimate child would be just sufficient to pay the dowry and get that woman married under the customary law. If we do a thing of this nature we are more or less encouraging polygamy, which is even happening today. I wish we had had the previous statistics taken by the Government since this Bill came into being and in addition to that we have got also good Christians, people who feel that by taking people into court to answer a charge, under this Bill—it is entirely their own fault, they are ordered by the Court to pay for maintaining the child, some of them are financially held up—what are

they do? We cannot underestimate the consequence because it is really a financial burden and a very heavy one which most people cannot carry. They must try all ways and means of getting away, of running away from the implication of such a Bill. We cannot of course rule out that there would not be attempts, and I know we have got laws to deal with such attempts, of causing abortions. Some people go into the countryside with their own witch doctors trying to bewitch the young infant. That is the sort of thing which a Bill of this nature will place in the minds of the less enlightened people, the Africans.

We all know that we have got loose men and loose women everywhere and although we agree that it is for these persons that such a Bill is introduced all the same they are with us. All the same these people are with us. But if that is the case how are we going to go about with these people? Is it something which is beyond control? We know, not only in the African social customs but also in many other communities as well, that in the case of a married woman of bad behaviour; it does not matter what you do with her; if she has a child from a man who is not her husband then surely she cannot dare to disclose to her husband what she has done. That is too bad. I do not say that it happens always in the minds of the ordinary African, that he would prefer a young married woman for that matter; but he can go and play about with a married woman because he knows he will be safe. This woman will not take him to court because otherwise she will be kicked out by the husband. That sort of thing is happening.

Now, the other thing which must also be taken into consideration, which I am glad that the Government has noted, is that we have young boys and girls in schools; of course, it is not the desire of the parents for that matter, and this Bill, even in the urban areas, is going to affect them. Say, for instance, there is a boy at school aged 18 and there is a girl of 16 years, if they get mixed up then what are they going to do? You have passed this Affiliation Bill. This boy has no money to pay what is ordered by the court. So what? So let us leave it to the tribes to sort these things out.

AN HON. MEMBER: Which tribes?

MR. OLE TIPIS: You may say, "Which tribes?" I will say let us leave it to the tribes. The Member should know which tribes I am talking about.

Sir, I beg to support.

MR. KHAMESI: Mr. Speaker, I would like to support the original Motion as well as the amendment. I do support the amendment because the Government has now agreed that the Bill that was introduced to deal with this matter is not adequate and it was not properly thought out. The reason why I felt it was not thought out was because it has ignored the traditional customs. It has not got proper definitions for those who were supposed to be included in the Bill.

A lot has already been mentioned which I do not like to repeat but I feel that the married woman should not have been included as a beneficiary, under this Ordinance. I do agree with the lawful provisions which are contained in this Bill because it gives some sense of security and protection to parents, like ourselves, with so many daughters and who want to see that they are protected by the law against unscrupulous young men, but, at the same time, I do not believe that professional prostitutes who go about in towns looking for money should be protected at all, because, after all, they have earned their due, and if they get any child it is up to them to look after the child.

I am afraid, Mr. Speaker, that I do not agree with one of the points raised which has been stated by my hon. friend when he said that the Vagrancy Bill should apply to these women, because most of these loose women, as he described them, if they were allowed or if they were forced to return back to the reserves they would flood the reserves and mess up the tribal customs and traditional ways, and they would spread disease in the reserves and cause quite a problem there. Therefore, I would like them to remain in the towns where they can obtain employment and live by their wits, as they do now. But we should do all we can to try and see that those who enter the towns, particularly the young girls from school and so on, are not enticed by the provisions of this Bill when they come to look for employment, for instance, when they fail to get suitable employment resort to messing about

in towns hoping that they will get children from two or three people which will enable them to be secure for at least 14 or 15 years until the children have grown up.

I would like to support the suggestions which have been put forward by the hon. Specially Elected Member when he said that the question of the children should be very carefully examined when the time came for the review of this Bill to take place so that if these children are sent under the care of the person to whom they belong, or sent to an orphanage, we may be sure that whatever money has been paid by the person responsible for the act is, in fact, used to bring up the child and not for the sake of maintaining the loose woman who, perhaps, might have run away from her husband or might have refused to be married simply because she knows it is more attractive to live by her wits.

Although the Affiliation Bill has been described as being non-discriminatory I know of a case in my constituency when a young girl was enticed by a non-African—in this case, a European—and got a child. Up to now I have tried my level best but I have failed to be able to get this gentleman involved in paying compensation according to the law. So I think, in actual fact and in application, the Affiliation Bill is purely or mainly for the Africans although, generally speaking, it is for all races.

It is very easy in theory to regulate and legislate and say that this is a non-racial measure and so on, but at the same time when it comes to actual practical application of the Bill, the whole thing changes and it becomes purely an African measure because you could not bring that non-African before any tribunal and unless the girl—the parents of the girl—are rich enough to employ a lawyer and to bring that person to the higher court it is impossible to get any suit brought against him. So I get any suit brought against him. So I feel, Sir, that there is a lot of good in this Affiliation Bill, but it needs very drastic review in order to suit the traditional conditions of the majority of the people to whom that Bill will ultimately be applied.

With those few remarks, I support the amendment.

MR. NGALA: Mr. Speaker, Sir, a lot has already been said but I would like to emphasize a few points. First, Mr. Speaker, I would like to point out to the Minister concerned that I am very happy that the Government has agreed to review this Ordinance but I would like the Government to know that this Ordinance has not been sufficient, nor are the native customs and laws sufficient—as they are today—in dealing with the problem which is underhand. Therefore, I hope that when Government is reviewing this matter they will bear in mind the fact that although the Bill has not been adequate to deal with the problem, the native custom and law is also not adequate to deal with the problem. Therefore, a thorough investigation into this is very, very necessary indeed.

Now, the question of townships as against rural areas: some Members have emphasized very much that probably this should affect the townships more and the rural areas less. I would like to say, Sir, that I very much disagree with such Members because a lot of havoc is being caused in schools in rural areas among the girls and also the rural areas have more schools than townships and I think we should not show any discrimination in applying this Bill, although I quite agree that the figures given by the Minister are reflected more on the townships. But I think that should not be a reason for discriminating at all. The question of Africans in townships becoming detribalized is probably a point but should not be a point to disguise the application or to remove the application of this Bill on the rural areas.

The other point, Sir, is that I would like to know whether the Minister before reviewing this Bill would be prepared to meet a delegation of African Members or people who are knowledgeable about African custom and tradition so that instead of listing all the customs that we have—and I think we can sit the whole day and the whole night as regards African law and custom—instead of doing that, we could get an insight into the whole thing and the feelings of the Africans generally as far as this Bill is concerned.

The other point, Sir, was that I think the time has come, as it does usually come, in all developing countries in the

world that child welfare should be seriously considered. There is the question of a woman who gets a child and she is very much ashamed, she does not want to go to the court to sue the man and she feels so guilty that probably she may not want to associate with the child at all and the child might be left alone. Now, this is developing very quickly in the country. We would like to know what provision the Minister concerned will consider along with the review of this Bill.

There is also the question of a school-boy who gets a child, probably from a schoolgirl. Now, the boy may not have the facilities to pay whatever order is given in the court. Now, this child needs some care. Now, we would like to know whether the State or the Government will create some facilities for such children, particularly in the municipal areas and in the townships and cities so that the welfare of the children can be looked after.

Now, there is also the question of the father who has no money at all, in that case. There are many young men in the rural areas who get the children and they have no money to pay. Whatever order you impose in the court, it is quite ineffectual because the chap has not got the money although he has done the thing. Now, such children should be looked after by a certain provision in the review.

Now, the question of African marriage. One hon. speaker has said that the African marriages are regarded by Europeans as not marriages. Now, I would like to know definitely, Sir, whether this is the legal opinion, particularly from the Minister for Legal Affairs, because I know definitely that the African marriage is recognized as a proper marriage and it is not just a question of an African living with a woman but once the African fulfils the obligation of paying a dowry or the bride price or every thing accompanying the marriage tradition, then that marriage is recognized by the law and it is a proper marriage. If it is not a proper marriage I would like to know from the Minister—either from the Minister for African Affairs or the Minister for Legal Affairs—whether this is not so. And if it is not, then it will be a very sad situation

[Mr. Ngala]
because the Africans are under the impression that their own traditional marriage is recognized and legal.

With these few words, Sir, I would like to support the amendment.

MR. WENO: Mr. Speaker, Sir, I think I must start by trying to disabuse hon. Members opposite who have represented the Affiliation Ordinance 1959 as a charter of libertinism. It has been suggested by the hon. Member for Nyanza North that it is the direct cause of girls getting a cheap living by having illegitimate children by several people—a sentiment which was repeated by several other hon. Members, for Central Nyanza, Mombasa Area, Central Rift and the hon. Specially Elected Member, Mr. Muchura. Sir, the Ordinance does nothing of the sort. There can, I am sure, be absolutely no question of any court, whether it were an African court or a magistrate's court, making an order against the putative father in the case of a prostitute or even somebody who is less profligate than that. Sir, section 4 of the Ordinance, in the first place, provides that the court shall refuse to issue a summons if it is not satisfied that there is reason to believe that the man alleged to be the father of the child is the father of the child and that the application is made *bona fide* and not for any purpose of intimidation or extortion. And then, in section 5 (2) of the Ordinance the court is adjured if the evidence of the mother is corroborated in some material particular to adjudge the defendant to be the putative father of the child only if it is so satisfied. Now, how can it possibly be imagined, Sir, that a prostitute or even a loose woman could satisfy a court that a particular man is the father of a particular child. It is just simply, Sir, is not, in ordinary human terms, possible and hon. Members opposite have doubtless experience of courts. Some of them may, for all I know, be members of African courts and I am sure that they would not ever come to such a finding—I think, Sir, it is very important that this point should be established, if it can be, clearly, because so many hon. Members, both in this debate and on the Second Reading of the Bill, seemed to take the point that this Bill was going to encourage, polygamy, free love and a lot of other immorality. I am sure, Sir, that it

cannot do any such thing and that leads me, Sir, to the point which the hon. Specially Elected Member made, that the character of the woman applicant should be taken into account. It must be taken into account; from what I have said I am sure hon. Members will see that it will be taken into account.

Now, Sir, there are certain other points with which I must deal. In moving his Motion on 22nd December the hon. Member for the Southern Area first of all criticized the definition of "single woman", which he quoted as including a married woman who is living apart from her husband. This definition has also been criticized here today, Sir, and the suggestion was made by the hon. Member for the Southern Area, as it seems to me, that living apart merely meant physically living apart. Of course, Sir, it does not mean that, nor does it necessarily connote divorce. What it does connote is that the marriage has broken up and that the man and the woman are no longer in fact husband and wife. It is very important, I think, Sir, that a married woman whose marriage has broken up should be entitled to secure an affiliation order if she has a child by another man, that is to say, a man other than her husband. It may be that she is still technically a married woman, but if she has a child by a man not her husband she should, I am sure, be entitled to an affiliation order just as much as if she were in fact a single woman.

In this context, Sir, it has also been suggested by, I think, two hon. Members that some people may not recognize African marriages. Sir, let me assure all hon. Members that as a matter of law—and I am sure in every other way—if a marriage between two Africans is so regarded by their own community, then it is a marriage in law. A marriage is always a question of the personal law of the people concerned and if their own personal law, as gathered from their own tribunals, regards two people as married, then that is a good marriage in the eyes of the law of this country. And that applies whether the marriage is monogamous or, if their own personal law permits it, polygamous.

Sir, the next point which the hon. Member for Southern Area made in

[Mr. Webb] moving his Motion was to criticize the definition of child as meaning a child under the age of 16. Now, that, Sir, is a point which will be taken into account in considering this matter. There is no doubt that in the African community children grow up much earlier than perhaps some other communities and it may be that affiliation orders should, if made, come to an end earlier in their case.

The hon. Member for Nyanza North suggested that provision should be made for the adoption of illegitimate children. Sir, that provision already exists in the Adoption Ordinance, 1958, and, of course, in many communities it is the most normal way in which illegitimate children are taken care of. A great number of illegitimate children are adopted. They then pass into the family of the adopter and no question of affiliation arises. Even without going through all the formality of the provisions of the Adoption Ordinance, it is, of course, quite normal for children to be adopted *de facto* rather than by law and particularly is that true, I am sure, amongst the African community. And that is another way in which these unfortunate children can be taken care of.

Another point, Sir, which the hon. Member for Nyanza North made, and I think certain other Members echoed his point, was that the money paid under an affiliation order should be used for the benefit of the child and should not be dissipated by the mother in high living. Sir, the Ordinance again makes provision for this because, in the first place, it provides that either when making the order or when varying an order the court may order that the money should be paid into the court and then paid to the mother or any custodian in such manner and subject to such conditions as it may direct. And that would, of course, enable the court in the particular case to oversee the spending of the money. Section 11 of the Ordinance makes further provision in this regard, because if the court at any time is satisfied that the mother of the child is not a fit and proper person to have custody of the child, then they can appoint some other person to have custody and the order is effective then in favour of that other person. And I cannot imagine a

circumstance more likely to move a court in that direction than that the mother was dissipating the money which had been ordered to be paid for the benefit of the child.

Sir, the hon. Member for Mombasa Area cited a particular case in which he said that an African girl had been seduced by a man of another race and suggested that it was impossible to get that man before a competent court without great difficulty. Sir, I am not entirely disposed to accept this allegation. I have no reason to believe that Africans do not freely institute suits of all sorts in ordinary magistrates' courts without the interference, if that is the right word, of the legal profession and I am sure that if the matter is looked at properly it will be possible to deal with that particular case.

The hon. Member for the Coast Rural asked whether the Minister would be prepared to receive a delegation to discuss this matter and I am authorized to inform him that Government will be very pleased to receive a delegation, though it must be remembered that on most points of customary law Government looks to the law panels and the elders of the tribes, who are the natural repositories of that learning. And that is where, for the most part, the investigation into this matter will lie.

Sir, there are two other little points which have, at one time or another been mentioned in connexion with this Ordinance. It was suggested, I think on the Second Reading of the Bill, that when an affiliation order had been made the parent of the girl lost whatever rights he might have against his daughter's seducer. Sir, that is not so. It is not so under this law, nor I believe under native law and custom and it is not the case in England. In England, although an affiliation order may be made against the seducer of a girl, the father of the girl may also be able to take action in court against that man for his daughter's seduction and it may be that the poor chap will have to pay twice for his fun. But, as I say, an affiliation order in no way bars the father's rights.

I remember it was also suggested on the Second Reading of this Bill, that if an order was made it might inhibit the man

[Mr. Webb] and the girl marrying because the man might feel that he was taking on something in the nature of an incubus if his wife had an order for payment of money against him. As my hon. friend the Minister said today, there is at least one case on record recently in this country where the man and the girl have got married, but I am sure, Sir, that as a matter of law such an order automatically dies on the marriage of the parents. The marriage of the parents affects the legitimation of the child and the father then becomes responsible for its upbringing and education as its natural father, just as he is responsible for children who are born in wedlock.

Sir, I welcome this Motion.

MR. MATE: Mr. Speaker, over-enthusiasm is as bad as slowness. My main worry was that the Motion seemed to be treading on the corn of the African customs. It seems to imply—or the Ordinance seems to imply that there was nothing good at all in the African customs in safeguarding these people. Now the Government have had occasion to look at it, I would like to impress on Government not only what the Member for Coast Rural recommended having a delegation to try to find out what the African feels about it, but they should also go into the deeper question of how the children should be maintained as provided for by the African customary laws. Some of these laws have undergone changes lately, but nevertheless the African customs are far as I know, at least particularly for the Meru people, and many other people, we have taken to settling these things in a way which is suitable to the two parties and the countryside. We have been responsible for discipline on this matter for a long, long time, and even today they are still used and it would be very unfortunate were they to be trampled down and no chance given for them to grow and look after the African people concerned.

At the same time, Sir, I feel there are other indigenous African customs like polygamy, which some people find strange, and where people feel they are very bad. I for one do not look at polygamy as a very evil thing because it is the custom whereby our people

legally and traditionally by custom meet some of these situations and it affects the economic well-being of the children and of the mother and this new law does interfere with some of these customs. It may seem a queer thing, but to my mind it is an anthropological question which has nothing to do with being a Christian or not.

At the same time the question of how a child should be looked after is a difficult one because today there are not so many child welfare places, the money which might be given to the mother might never reach the child, and that is where I join hands with the hon. Non-nominated Member, Mr. Muchura, about the welfare of the child.

I hope Government will look at the question of ability derived from the African customs and how far they should be dropped and how far they should be carried on. These customs are not going to change overnight, they are going to stay, and it is really a question of situation and the economic welfare of the child. If provided for the African customs should count as legal as an order given under this Ordinance. On the other hand, Mr. Speaker, I feel that there is a lot of good in this Ordinance in that it protects the African woman's dignity in comparison with the other races. They must meet in Kenya and in different circumstances, and this is one of the special circumstances where complication arises. My feeling is that the Affiliation Ordinance and the African traditional customs should be supplementary, where one has settled a case the other should recognize it. I hope, Mr. Speaker, this is quite clear. To take an example, two individuals have their *shauri* settled in an African court, this should be the end of outside court, this should be the end of the matter and that should be considered as legal elsewhere. A similar sort of thing is done whether by a court in Nairobi or Nakuru. I do not know whether the Minister for Legal Affairs or the Minister for African Affairs will feel that this is a satisfactory way, but I think here we have two situations where the African traditions might well provide for everybody and in all cases the two methods should be retained.

So, Mr. Speaker, I feel that I cannot really oppose the Affiliation Ordinance.

[Mr. Mate] there is good in it which could help everybody, but if it is to trample down the African customs it would be most unfortunate.

I beg to support.

Mrs. GICAGA: Mr. Speaker, many bad things have been said in this debate by African men against African women. I am not prepared to say anything bad against them.

The Affiliation Ordinance came into operation only last year. Its life so far has therefore been very short and I do not think it can be said that it has done a fair trial to see how it is going to work out in practice.

It has been suggested that the money ordered to be paid under an affiliation order will be used by the mother for her own purpose and neglect the child. I think this is mere supposition and that there is no evidence to support the allegations.

Mr. Speaker, mothers know that there is no love greater than that of a mother for her child and in a case of a mother who is given the means to support her child but nevertheless neglects to do so would be the exception rather than the rule. In debating the Motion before the House it is perhaps to be considered the real purpose of the Affiliation Ordinance. I believe that the real purpose of this Ordinance is to provide protection, maintenance and security for the child. Can anyone deny that this is a responsibility which ought to be placed upon those who are responsible? In the face of the many social changes which have taken, and are taking place in Kenya today, and having regard to the great human and social problems which seem to increase day by day as a result of those changes, it is difficult to understand how it can be seriously suggested that we revert to inadequate methods of dealing with these matters—methods which are entirely out of keeping with the current social development and changes.

Every race, Mr. Speaker, has its own customs. Some are good and some are bad. I am sure that we should do all that we can to preserve those which are good, but equally we should not be afraid to get rid of those which bring

nothing but suffering and misery to the community.

The Affiliation law is a law which looks to the future to see that the welfare of unfortunate children of all races is safeguarded so that when they grow up they may not feel that they are not wanted, but may be helped to enjoy at least some of the advantages of the normal child, and so become a useful member of society.

Mr. Speaker, I welcome the Bill.

MR. TOWETT: Mr. Speaker, Sir, I am very much encouraged and flattered because the Government has given us something to think about. They always say, "Hope springs eternally in the human breast," so I hope that the Government is going to look into the ways of handling the problems, and we leave the House quite well flattered. I will not be long, Sir, but I will take the whole time available, and I am going to start with what the Minister said.

I thought it was all right what the Minister for African Affairs said—it was all right—but bearing in mind that this Affiliation Ordinance was actually assented to by His Excellency on 13th May last year, and bearing in mind the number of cases which have come before our courts, and those which are still pending, I think we can at once, if we introduce arithmetical progression, we can calculate as to how many cases will have gone through our courts, say within the next half year, Sir. I think, unless the Government does something very quickly to review this situation, we shall have so many cases that we shall be giving work to specialized officers to deal with these cases because they are innumerable—they are bound to be innumerable looking at these figures.

The Minister for African Affairs, when moving the amendment which is now the Motion before the House, did say that it was meant mainly to belong to the urban areas. Well, if it was the intention of the Government to have this Ordinance applied mainly in the urban areas why did they not insert something to that effect in the Ordinance to say that for the time being, or in the foreseeable future, this Ordinance will only apply to urban areas? It was left without defining the areas of application.

[Mr. Towett] Sir, and we take it that it is applied in both rural and urban areas.

Now, Sir, turning to what the hon. Member, Mr. Slade, said. He said that the Motion which I moved was mainly on the African point of view, or it was rather not meant to apply to all races. I agree with him. When I thought of moving the Motion I was only emphasizing those aspects which I thought were defective in as far as the African customary laws of the Europeans are, and I meant to leave that for the European Members of this House to insert those portions which they thought were also defective in the law of the European community.

I fully agree with what the Member for Central Nyanza said about our ways of living, and what we used to do, but I have only one thing to insert—more or less inside his own statement. That is African customs were all right before the coming of Europeans and before the advent of money. Money has come and many customs have got to be spoiled by the process of money.

Referring to what the hon. Member, Mrs. Hughes, said, she said that African ladies had actually gone to her and asked her that there should be a law which was more or less non-racial. I accept that, but those African ladies were only a very few. If they knew anything at all about this Affiliation Ordinance, or if they wanted some support for their children, they were very few, and if it was a matter of voting, I think those who were left out who went to the hon. Member Mrs. Hughes, should have outvoted those very few who sought some support from her.

The hon. Member, Mr. Muchura, I think has been misunderstood, when he referred to the character of the woman, that the character should be considered. He did not really mean character as such. He meant character in relation to the practices of prostitution. He meant, according to my understanding, that a woman who, say, last year appeared in a court in Nairobi and was given, say, Sh. 40 a month for the maintenance of an illegitimate child, should not, when the same woman goes and lives in Kericho, should not again be awarded some more money for her second child

when she gets another child at Kericho. Women, as I know them, or most of them, want to have children. They want to have children. I have seen them. They move from place to place. They want to have children. Children to them is just wonderful. Now, when a woman has a child here and she goes to court here and gets money and then she goes and changes her residence and goes to Eldoret, and she changes her name and gets money for her second child which is produced at Eldoret, and I believe, Sir, that is what I understood from the hon. Member, Mr. Muchura.

There is one point, Sir, which nobody has adequately referred to, and it is this. African courts, as they are today, do not have statisticians or people versed in the process of calculating how much a child might need. Who is going to assess in the African courts how much a child really needs? I know some of our court elders today would say how much a child needs is how much their own children need, but is that what you are going to have? If I were an elder in a court, I would say a child would need what my own child would need, but these things vary. They vary. Some court elders think their children need Sh. 100 a month. Some say Sh. 10. So I would ask the Government to see how this process of assessing how much a child would need, and to look into it.

Sir, the hon. Member for Mombasa, Mr. Khamisi, was interesting in the way he tackled the problem, and I would like to congratulate him on what he said, but I would like to ask him next time to be more cautious.

Well, Sir, referring to what my friend, Mr. Ngala, said, it seemed that he was supporting the Motion, whereas he seemed actually to be disappointed in the Ordinance. I was at a loss. I do not know what he meant to say.

Now, Sir before we finish in four minutes I would like to tackle a few problems which have arisen from the Acting Solicitor-General. He said, Sir, that we had misunderstood some points that we had misunderstood some points that we had misunderstood the Ordinance to be actually taken of cheap living by some women, means of cheap living for the women, and he said that because we said that we thought the women would benefit and we thought the women would benefit and live very cheaply. Well, Sir, to give a

[Mr. Towett]

resumé of what I have said. I have said it this way. A woman may get Sh. 40 for the first child, at Kisumu another Sh. 40, at Eldoret another Sh. 40, at Mombasa another Sh. 40—is that not a source of income? I think it is. Four children—Sh. 40 times four—Sh. 160—whereas at the moment the woman concerned does not get even a shilling. Now we thought it is a misconception of the whole process—we thought that was a way of actually encouraging our girls to go in for more children and more revenue.

Now, Sir, the Acting Solicitor-General again said that living apart did not mean physical separation only. It included the breaking up of a marriage. What does he understand, what does he mean, Sir, by saying a marriage is broken up? If divorce is not included in breaking up it does not matter how many years that marriage breaks up the children are still mine, and so if by breaking up of a marriage he means actual divorce process and ceremony, then I will accept what he says, but if it has broken up for so many years without divorce then I do not actually accept what he says.

And then he said something very interesting. He said when he was agreeing with my points that African children grew up much earlier, I would like to say also that African children also are very precocious.

Now, Sir, following up one Member who suggested that we should have a delegation—I think it was the Member for Coast Rural—that we should have a delegation actually bringing some views about the whole matter. I would like to suggest whether it would not be a better alternative if the Government could ask all the African district councils to appoint committees and make recommendations and the recommendations to be sent to the Government for consideration—instead of having so many delegations coming to see the Minister, or the Ministers concerned.

Now, Sir, my time has come, and I would like to congratulate the gracious lady on her lucid exposition on the other side of the House and what she has said, and I hope the Government will also take into consideration her own views, Sir.

With these remarks, I beg to move the Motion.

The question was put and carried.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentley): That brings us to the time for the suspension of business, and I therefore adjourn Council until 2.15 p.m. tomorrow, Thursday, 7th January.

The House rose at thirty minutes past six o'clock.

Thursday, 7th January, 1960

The House met at fifteen minutes past two o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentley) in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:—

The Education (Fees in Government African Schools) Rules, 1959.

(By THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson))

The Weights and Measures (Amendment) Rules, 1959.

(By THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan) on behalf of the Minister for Commerce and Industry (Mr. Hope-Jones))

ORAL ANSWERS TO QUESTIONS

QUESTION No. 34

MR. MUMI asked the Minister for Agriculture, Animal Husbandry and Water Resources:—

(a) What arrangements, if any, is Government making to facilitate the carrying of water by pipelines from—

- (i) the Tana;
- (ii) the Athi;
- (iii) the Tiva; and
- (iv) the Thua

Rivers which are the potential water sources for the Kitui District?

(b) What financial assistance, if any, in the form of either grants or loans has been accorded to the Kitui District to enable the implementation of the arrangements in (a) above?

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. Mackenzie): Mr. Speaker, Sir, I apologize for the length of the answer but the Question in itself is a long one.

(a) (i) and (ii). No pipeline has been laid from the Tana and Athi Rivers because the "cost" in each case is considerable and water supplies within reach of both rivers are reasonable. A proposal to pump water from the Athi to the top of the Tana Dam has been considered in the past but has been rejected because of the high cost and the comparatively few people who would benefit from it.

(ii) A nine-mile pipeline from the Tiva River to Mbaroni is nearing completion and when completed, will have cost about £9,000, of which Government is supplying £4,000, ALDEV £2,000 and the African district council £2,000. Three pipelines from the Tiva have also been constructed in the Athi-Tiva Scheme at a cost of £10,000 provided by way of ALDEV loan. Two further pipelines (three miles) and to Kamziko (approximately six miles) are planned for construction in the 1960-61 period.

(i) Three pipelines from the Thua River have been surveyed and will be laid in the 1960/61 period: one to Muthi (12 miles), one to Mumi (six miles) and one to Zombe (six miles).

(b) Between 1946 and the end of June 1958, £96,850 was provided by ALDEV for water supplies in Kitui, of which approximately £16,000 was loan money, the rest being grant. In 1959-59 the district received £250 of which £2,000 was loan. In 1959-60 the district will again receive £15,775 grant for water schemes. £10,000 of this is a contribution which will be dependent on the water rate being raised by the African district council, making £20,000. This brings the total grants and loans provided by ALDEV since 1946 in the Mumi District to approximately £100,000. In addition, ALDEV has constructed the Yatta furrow, which is miles in length from the Tana River at a cost, as far as accounting to £336,305, which will provide ten

[The Minister for Agriculture, Animal Husbandry and Water Resources] causes of water in the Mwita Syano and Tiva Rivers, both of which, in due course, should flow permanently as a result. I think Council will agree that these figures indicate that the Kitui District is enjoying a very fair share of the funds available for Water Development.

MR. COOKE: Mr. Speaker, will the hon. gentleman agree with me—and I am talking in terms of millions of pounds not thousands of pounds—that the right solution to this problem (and I think you know as well, Sir, having been Minister for Agriculture) is to build a barrage along the Tana River every five miles or so and then flood with irrigation trenches the country perhaps ten to 15 miles back.

That would also apply to the Athi River, better known as the Sabaki River, would the hon. gentleman agree with me that it would need an unlimited amount of money but we could revolutionize the agricultural possibilities of that area?

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I will approach the other member of my clan and see whether he has money available for such a scheme.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): Before passing on to the next question I would again ask hon. Members when they have a question of this type to act under Standing Order No. 26 and to ask for a written answer. That answer is circulated in the Official Report of the Council, and, of course, can be published in the Press. I even suggest that probably hon. Members would get more information out of a written answer on a question of this kind than from an oral one.

QUESTION NO. 37

MR. MUMBI asked the Minister for African Affairs:—

- (a) Whether it is intended to issue freehold title certificates to the Akamba settlers in Makuani and Yatta Settlement areas?

(b) If the answer to (a) is in the affirmative, when?

(c) If the answer to (a) is in the negative, what is the future position of the Akamba settlers in these areas?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir, I beg to reply:—

(a) No, Sir.

(b) Does not arise.

(c) It is proposed in due course to grant leases to established settlers in the Makuani area; the Yatta Plateau and Ithanga areas are Native Reserves established under the Fourth Schedule, Crown Lands Ordinance (Cap. 155), and these areas are at present being developed on a system of controlled communal grazing and it is not intended, in the foreseeable future, to give title to individuals in respect of any particular piece of land.

MR. MUMBI: Mr. Speaker, Sir, arising out of the Minister's reply to the third section of the question, in view of a similar answer to a question asked in this House by the Minister for Agriculture that the Akamba would be allowed to settle on the Yatta Plateau when the Yatta Furrow is completed, is the Minister suggesting that the answer given by the Minister then to the other question was incorrect?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): No, Sir, I am not suggesting anything of the sort. In fact there are a great many Akamba already resident on the Yatta Plateau.

MR. OLE TIPIS: Mr. Speaker, Sir, arising out of the reply, can the Minister please tell us as to why Africans settled in these settlement areas such as the one mentioned by the questioner and the Olungurone Settlement for that matter should not have the title deeds?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Sir, residence in Makuani, which is one of the areas under discussion, is governed by the Native Lands Trust (Reconditioning of Makuani Area) Rules, 1948, and under those rules any person whose name is on the register can remain in Makuani, subject

[The Minister for African Affairs] to certain conditions. If he fails to comply with those conditions he can be removed. It is necessary that those conditions be imposed, Sir, in order to recondition the area. The question of the Olungurone Settlement is another one.

MR. COOKE: Surely, Sir, the answer to that is that these rules should be amended. I know the Makuani area very well, and there is no reason whatever why the—

AN HON. MEMBER: Speech, speech.

MR. COOKE: Is it a speech? And there is no reason why those people should not get freehold titles, and I think the hon. gentleman's reply was very weak indeed.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): Mr. Cooke, I think you are commenting on the Minister's reply and not asking a supplementary question.

MR. MBOYA: Mr. Speaker, Sir, would the Minister indicate whether he is willing to review the situation in view of the changes now taking place and the circumstances that must have changed since these regulations were drafted.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir, the situation has not radically changed since the regulations were drafted.

MR. SLADE: Mr. Speaker, would not the Minister agree that at some stage this area will be qualifying for land consolidation, and the consequent issue of titles in the same way as other African areas.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): It is not a question of land consolidation, this is a settlement area and farms will be allocated in it.

MR. MBOYA: Mr. Speaker, Sir, would not the Minister agree that these people, like everybody else, are interested in having some security, and therefore the situation should be reviewed accordingly?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): I have indicated that leases will be given.

MR. MUMBI: In view of the fact that these people are being encouraged to establish homes in this place will the Minister not do anything about it at all?

QUESTION NO. 43

MR. NGALA asked the Minister for Local Government, Health and Town Planning:—

- (a) The number of lepers treated and cured between 1949 and November, 1959—according to Provinces—and give the numbers of lepers still under treatment according to Provinces.

(b) Whether any medical survey has been carried out in any Province to assess the spread of leprosy.

(c) Whether Government, in view of the poor and inadequate facilities for leprosy patients in the country, intends to take immediate steps to provide better accommodation and better medical care for lepers in the Coast Province and the rest of Kenya.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock):—

(a) Persons notified over the last ten years as suffering from leprosy are:—

Coast Province, 3,421; Nyanza Province, 6,500; Central Province, 570; Southern Province, 239; Rift Valley Province, 116; Northern Province, 6.

The numbers under treatment or surveillance in the Coast Province is 2,170 and in Nyanza Province is 6,487. This indicates that approximately 13 per cent of the known patients have ceased treatment either through cure or natural termination of the disease. Similar conditions rule in other Provinces where the prevalence is less.

(b) A complete Colony-wide survey of the prevalence of leprosy was carried out by the Interterritorial Leprologist in 1948/49. Further surveys have been carried out over the years 1956 and 1957 in the Nyanza Province where the prevalence of this disease is highest. A recent assessment in the Coast Province indicates a level of prevalence of only 43 per cent as compared with Nyanza.

[The Minister for Local Government, Health and Town Planning]

(c) A leprosy hospital and settlement has been built in the Nyanza Province at a cost of £50,000. It is also a research centre. Facilities for the treatment of leprosy are not inadequate as the best medical treatment is available to all suffering from the disease. Modern treatment consists of the administration of drugs and domiciliary supervision. The climate at the coast is unsuitable for the establishment of leprosy settlements.

The Tumbé Settlement at Msambweni is a relic of the old days and the department is doing its best to close it down. There are, however, certain cases remaining there who have completely lost touch with their home environment and it is impossible to reinstate them. It is not strictly a leprosy settlement, but remains to meet a social necessity.

MRS. SHAW: Mr. Speaker, arising out of that reply, would the Minister kindly tell me whether it is a fact that the Leprosarium d'Uagio, which I imagine is the one he referred to in Nyanza Province, is being closed down because of the curtailment of its staff. Is that so?

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (MR. HAVELOCK): There has been a certain readjustment in staff. It has not been closed down and the actual activities are not being diminished in any way.

MR. NGALA: Arising out of the Minister's reply, could the Minister explain why facilities cannot be made available because of the climate?

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (MR. HAVELOCK): I have said, Sir, that the coast area is not a suitable place for a settlement and domiciliary treatment is the best possible treatment for leprosy, especially as one does not wish to divorce the patient from his home life, if possible, which, unfortunately, has happened with the people at Tumbé; but they will still have their domiciliary treatment.

MR. SLADE: Mr. Speaker, could the Minister give any indication of the number of cases which he has described which are children?

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (MR. HAVELOCK): I am afraid that I would have to have notice of that question.

MR. MBOYA: Mr. Speaker, arising out of the Minister's reply, while the domiciliary treatment may be the best, what arrangements would be made for lepers in the Coast Province where conditions are not suitable for domiciliary treatment.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (MR. HAVELOCK): Very few cases would not be suitable for domiciliary treatment and if there were such cases they would be accommodated at Iteso.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I would again draw the attention of hon. Members that with this type of question, where information is required in great detail, it is far better obtained by raising the matter by way of a Motion on the Adjournment or by a Question asking for a Written Reply.

QUESTION NO. 54

MR. KHAMUSI asked the Minister for Education, Labour and Lands:—

- (1) What is the total acreage of the ten-mile Coastal strip?
- (2) How many acres of this total is designated—
 - (a) Crown land;
 - (b) commonage;
 - (c) native land units;
 - (d) freehold and/or leasehold?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (MR. MATHIESON): I have obtained the information sought by this question but it cannot conveniently be conveyed in an oral reply. I am accordingly writing to the hon. Member.

QUESTION NO. 60

AIR COMMODORE HOWARD-WILLIAMS asked the Chief Secretary in an effort to help secure the political stability we need in this Colony to attract credit

[Air Commodore Howard-Williams] and trade, can Government give assurances on direct terms, on the following issues:—

First, is it the irrevocable intention of the Government or not, that we are to become a multi-racial State or, as I prefer it, a non-racial State?

Second, is it the irrevocable intention of the Government that merit and ability, experience and integrity are to be the criteria of appointment to Government posts?

THE CHIEF SECRETARY (MR. COULTS): Nothing is irrevocable in this world, but in respect of the first point I would draw the hon. Member's attention to the statement made by the then Secretary of State for the Colonies in the House of Commons on 22nd April, 1959.

As regards the second point, yes, Sir.

QUESTION NO. 39

MR. PANDYA on behalf of Sharif Shatry asked the Minister for Forest Development, Game and Fisheries is the Government aware of the damage to the prosperity of Lamu traders and population by the restriction placed on the export of Boritis by steamers when Tanganyika and Zanzibar allow it throughout the year?

THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (MR. BLUNT): The Government is not aware that damage is caused to the prosperity of the traders and population of Lamu by the restriction on the export of mangrove poles by steamer. It is the policy of the Government to encourage movement by dhow where possible in view of the trade brought to Lamu each year by the dhow fleet. This policy is subject to regular review particularly should the number of dhows calling at Lamu be insufficient to move the poles on offer. In such an event movement by other carriers would be considered.

MR. NGALA: Arising from the reply, Sir, would the Minister give us an assurance that Government will investigate this so that they could be aware of this matter?

THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (MR. BLUNT): I am not prepared to agree that there

is damage but the matter is under continual investigation and there is in existence a Committee consisting of cutlers of Boritis and traders with the district commissioner and the forest officer who are the authority on what is to be done.

COMMITTEE OF THE WHOLE COUNCIL

Order for Committee read, Mr. Speaker left the Chair.

IN THE COMMITTEE

[K. Bechgaard, Esq., Q.C. in the Chair]

The Firearms (Amendment) Bill

Clause 2 and 3 agreed to.

Clause 4

MR. SLADE: Mr. Chairman, with reference to paragraph (b) of clause 4, where there is a proviso to the effect that a licensing officer may refuse a licence if he is not satisfied that the firearms will be kept securely, we discussed this at the Second Reading and the effect of the information and advice given by the Solicitor-General was that this was superfluous because it was already covered by section 18 of the existing Ordinance. I do not propose its deletion for that reason, if it merely clarifies some ambiguity; but we are worried as to the actual application of this proviso which is now stated so clearly. We do want an assurance from the Minister that he will see that there is no undue rigidity in the application of this power of the licensing officer to insist on proper methods for securing firearms. We feel there may be some sort of rules whereby in every case, for instance, there is insistence on the purchase of a large expensive steel armoury, which is indeed suitable for rifles or shot guns but hardly necessary for rifles or a revolver. So I am asking the Minister to reassure us, and say that he will see that the licensing officers should adapt their requirements to the real needs of the protection of each particular kind of firearm.

MR. MANGAT: Mr. Chairman, I will go even further than my colleague has gone: I will move the deletion of this paragraph.

Now, if it is superfluous then it only creates ambiguity. It is an offence for

[Mr. Mangat] anyone to be careless about a firearm. But it is going too far to give discretion to a licensing officer to refuse a licence merely in anticipation of a holder becoming careless later on. It is like binding a man for being of good behaviour before he has even done anything leading towards a breach of the peace. Besides, while under the substantive section one has, in appeal the means whereby he can establish that perhaps the law was wrong in holding that reasonable care had not been taken, here there is no appeal except to the Minister who, after all, is an executive and who cannot have all the time to look into these things and may not be able to entertain the advocates of the parties for reasoning before him.

I hope I am preaching to the converted and I expect that the hon. Minister will appreciate that the insertion of these words will simply underline the necessity with the licensing officer of being extra careful about the care of the weapon. And the very fact that it gives him the right to refuse a firearm simply on presuming that a certain person may not be careful about it is giving too much power into the hands of the licensing officer. Even when this power did not exist in practice it was being exercised and now it is repeated in the same Ordinance it will certainly convey to him that he is required to be fairly strict about this. Unfortunately this section is being exercised or the right of refusal is being exercised more against the Indian than against any other. It may be because the Indian living in two-roomed compartments cannot satisfy the licensing officer that he has proper safeguard for the weapon but I cannot imagine that one should be required to build a strong-room with the 22 pistol just being hung there like a bird on a perch. There is no sense in it. If he can carry it on his person or can be careful about it in other ways he should not be required to build a safe for it. And in any case in the law the same section being repeated twice—once in 4 (b) and then in 18—would look really silly. I hope the hon. Solicitor-General will agree with me that it should be deleted and if he does not, then I will move this amendment of which I have given notice: "That section 4 (b) be substituted by the following words—that it shall be an implied condition of every

licence that the holder thereof will at all times keep the firearm securely and in safe custody and in safe condition and take all precautions to ensure that the firearm is not lost or stolen and is not at any time available to any person not lawfully entitled to possess the same." This is only to make it clear that that is the condition of the licence and later on if that condition is not observed, then under section 18, the person can be charged and convicted. But I think it would be a gross miscarriage of justice if a licensing officer should before anything happens forestall the licensed holder and say, "Well, I refuse a licence because I am not satisfied that you have got the facilities for safe custody." The appeal to an executive officer, even though he is the Minister, with great respect, means little. We have seen appeals to the Chief Secretary from immigration offences and little comes out of it because he may be so busy with other things that probably he leaves it to his juniors to do deal with them. And the same thing will happen with this.

Mr. WENN: Mr. Chairman, Sir, I do not think that I ever went so far yesterday as to suggest that this proposed amendment was superfluous. I was merely at pains to defend the action of the police which had been condemned by my hon. and learned friend, the Specially Elected Member Mr. Slade, who had suggested that they had been acting wholly without jurisdiction. And I was only trying to show that I thought they had some jurisdiction I think, Sir, that this amendment is most necessary to put the matter beyond doubt and to give the police without question the power to refuse a licence where they are not satisfied in the terms of this proposed amendment.

That, Sir, brings me to the point made by the other hon. and learned Specially Elected Member, Mr. Mangat. I do not think there is any duplicity. There are two quite different things. In one case the licensing officer is being given power to refuse a licence if he is satisfied that the weapon will not be safely kept, and section 18 provides that if, in fact, the firearm is not safely kept, then an offence is committed. The two things are quite separate and a person who has an arm and fails to look after it, so that it is stolen, possibly merits punishment for

[Mr. Webb] the specific loss of that arm and possibly also merits that he should not receive a licence in the future because he has shown that he is not capable of properly looking after an arm. I did not altogether, Sir, get the form of my learned friend's amendment, but it cannot, of course, fit into section 5, the proviso to which says that a firearms certificate shall not be granted in certain circumstances; if it were to be accepted it would require to be incorporated as a substantive subsection in some place in the Ordinance.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Sir, I might refer to matters of principle. Sir, I can readily give the assurance asked for by the learned Specially Elected Member, Mr. Slade, that, of course, we will go into these questions most carefully and see that unreasonable demands are not made. But I would submit, Sir, to both the hon. and learned Specially Elected Members, that we really must profit by our experience. The figure which I gave yesterday which was something like 640 weapons lost in 1953 and which has come down to 11 weapons in 1959 does, I think, prove beyond any argument the absolute necessity for weapons to be properly looked after and cared for. We shall not be unreasonable but it has all too often been proved that if you keep the weapon in a locked cupboard, for example, that the cupboard is very easily broken open and the weapon is stolen.

"Unless Members may think I am not setting an example myself I may say quite openly that all weapons are at the moment residing in the district commissioner's armoury at Kisumu, because I think they are safer there than in my own house.

SIR CHARLES MARKHAM: You are breaking the law: it is not a licensed place!

Mr. HASSAN: I would like to ask the worthy Minister to tell us if that number—600 and some odd weapons which were stolen—whether this number included the police armoury which was broken into at Naivasha and also all the weapons which were stolen from the police and the military personnel, because what we found out during the Mau Mau

rebellion was that a very large number of weapons which were used against the law-abiding citizens were mostly 303 weapons the possession of which is completely prohibited to the civilians. Therefore the question at the moment as has been raised by the Specially Elected Member is that if a person succeeds in getting a firearm licence from the licensing officer he is called upon to have a steel-made strong box or some special cement built structure to keep arms safely in the house, costing probably more than the price of the pistol or the shot gun; whether such a thing, if it is enforced, is necessary at all in cases where a person in his own house can look after the weapon in his own strong-room or store or carry on his person.

Mr. MANGAT: Before the Minister replies to this question he might as well reply to this also. I think, Mr. Chairman, the logic of the Minister is truly alarming. According to him we should recall all the arms so that not a single arm is lost. Surely it is no argument that because a few are lost so they should not be in circulation? It should be according to the need and the need is greater today than it was before, because we had the Kenya Regiment alerted and these days it is not alerted and these incidents which happen in Nairobi are happening which call for the help of the police, if they cannot extend protection then they should allow the people to protect themselves.

Now I apologize to the hon. Acting Solicitor-General that I put that amendment in a great hurry because I had to give notice in advance, so I had not really found the right place to put it in, but that is merely a suggestion, I withdraw it at once, this amendment, in the hope that the hon. Solicitor-General will himself place the proper wording wherever suited.

But I must insist on this, that I am not satisfied with any assurance from the Government Benches from a Minister who may not ever go to the Central Firearms Bureau in Nairobi and who keeps his own arms at Kisumu, and see what is happening over the counter. You can see all the Indians handing in their arms and being told, "Go away now, arms and being told, no more licences." It has been stopped, no more licences. That is actually happening, how can the Minister argue that it is at the discretion

[Mr. Mangat] of the firearms licensing officer? It is all very well to say, "I give assurances," what assurances? In practice hundreds of people have been deprived of their firearms, not even an investigation was made as to whether they needed them. It is an intolerable position, and, Mr. Chairman, I must persist, although the Government can outvote me, but I must protest that the licensing of arms is not being carried out in a proper manner and these licences are getting all the harder to obtain. Surely, Sir, the hardship is already too great and need not be aggravated.

I would appeal to the Government to draft these words so that at least we can depend on the court's decision whether there was the necessity for a firearm to be licensed, rather than the discretion of a licensing officer who is absolutely overweighed with work and who cannot have time to think of every particular case on its merits and adopts the line of least resistance and says "No licence".

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): I cannot give the hon. Member the figures for which he asks without due notice; if he would like to give notice of the question I can certainly provide the details he wants.

Sir, with regard to the points raised by the hon. and learned Specially Elected Member, Mr. Mangat, I very much regret that I cannot agree with him. I do say that safe custody when not on a person—and no human being is going to carry his weapon for 24 hours out of the 24 hours—(somewhere when they can be safely put) is essential and I do not think that this is unreasonable.

The hon. Member also said that perhaps the Minister would send the appeals to a subordinate because he was too busy. I can assure the hon. Specially Elected Member that I go into every single appeal personally myself and I do not delegate the power to anybody else. If there are cases of individuals, who the hon. Specially Elected Member thinks have been unjustly used, I can only advise them to appeal to the Minister, Sir.

SIR CHARLES MARKHAM: Mr. Chairman, Sir, there is one great danger which the Minister seems to have overlooked in view of the fact that he has now raised the fact that he is now using the District Commissioner's office at Kisumu for storing his arms. If an African goes to the Central Firearms Bureau and says he stores his arms during the daytime in the Standard Bank of South Africa, in Delamere Avenue, if the argument he uses then to justify retention under this proviso that it is applicable to him, then, Sir, it is applicable to the Minister of Defence too. The whole point, Sir, of this proviso, I thought, was the safe custody of the firearm at all times. I cannot quite see how the Minister can reject an amendment, even though it comes in the wrong place—I accept that it is difficult to follow—how he rejects the amendment or the spirit of the amendment because the great truth, Sir, let us face it, is that the majority of arms are not stolen from safes or from cupboards but they are stolen from the individual who has them in his pocket or on his person. That is the great danger, that even though the person may well have a perfectly adequate wall safe or a safe which is approved by the Firearms Bureau, he is still capable of losing the firearm. I do not think, Sir, my hon. friend on my right here, the Specially Elected Member, wants to do anything more than safeguard the position, to make quite certain that the criteria for the possession of a firearm shall be the ability to use it properly and at all times keep the firearm secure. I cannot see, how to satisfy the licensing officer that you have put your gun into the bank for a certain time of the day, makes that gun any more secure than someone who says they keep it in a secret cupboard in their bathroom, because it is possession of it for the other hours of the day which is the danger.

There is one other point before you take, Mr. Chairman, the amendment, or put the amendment. It is this, I tried to make the point yesterday and we got rather a conflicting answer from both the Minister in charge of this Bill and the Acting Solicitor-General.

There are a lot of people of all races, but I must refer to the two races of which I have knowledge in this particular instance, who have had a gun for

[Sir Charles Markham] some years without any trouble at all, and the licensing authority put out a notice, asking whether it was necessary or advisable for the person to retain their gun and quoted examples of the stolen firearms which the Minister mentioned a moment ago. When many applicants—and I can quote chapter and verse if I am, so challenged—went to renew their firearms licences, they suffered a sort of personal intimidation to hand in that firearm, but never before, until we had this debate yesterday, had we been told that provided they had got safe custody for the firearm, could that firearm be removed from them, provided they did fulfil the other conditions mentioned by the Minister yesterday. But I do know examples, Sir, where people have been told to hand in their firearms because they lived in an area deemed by the Kenya Police to be safe. Well, Sir, the Kenya Police are amazing prophets we know from the past—particularly we know of the experience that when *Mau Mau* was killed or its head chopped off, according to the Commissioner of Police, the trouble really started afterwards. I believe the police, Sir, who are the licensing authority in this instance should not be the persons to decide whether a firearm is necessary in that particular zone. Circumstances should be effective as changes do take place. I would urge the Minister, Sir, if he cannot accept the amendment now, to reconsider the matter, based perhaps on re-examination of the policy of his Ministry regarding firearms, because I can assure him that there are many people who have considerable disquiet on this particular clause and would, indeed, welcome the amendment moved by my hon. friend the Specially Elected Member.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Mr. Chairman, Sir, I can give the hon. Member the assurance for which he asks. If he can give the details of specific cases where injustice has taken place, I will readily go into them and if I am then of the opinion that a re-examination of the policy should be made, I will definitely give the undertaking that we will do so.

MR. MANGAT: Mr. Chairman, surely you cannot expect every man in the street to go to the Minister personally

for the putting of his petition? How can the Government operate if the Government is open to the man in the street for his petitions. We want the protection of the courts. But let us not submit everyone to the whims of the licensing officer, when before anything happens he says, "I do not believe you are capable of keeping this in safe custody, surrender, your weapon." That is the whole point, today we have this Minister, tomorrow it may be somebody else who does not bother about it. We cannot have this, this is not the proper way of legislating.

THE DEPUTY CHAIRMAN (Mr. Boothgard): Would you like your amendment to be put then?

MR. MANGAT: No, I am not putting it. I withdraw the amendment.

Amendment by leave withdrawn.

The question was put and carried.

Clause 4 agreed to.

Clause 5 agreed to.

Clause 6.

SIR CHARLES MARKHAM: Having heard the lukewarm approval of clause 5 from the other side of the House, I wish to raise the small matter of clause 6, Sir, which I do not think is very controversial particularly in view of what was stated by the Minister during the course of the Second Reading yesterday. That concerns, Sir, section 10 (i) which appears in this amending Bill regarding the police officer, customs officer or licensing officer having the right to demand the production of a firearms certificate, etc. Normally, Sir, there is a time limit given which applies to things like driving licences, I think it is 48 hours, or it can be sent by post or taken to the nearest police station. I was told this morning that Kenya has the reputation in one particular department and it is not, Sir, firearms licensing or the Kenya Police—of being some of the most sanguinary-minded officials and they are in Mombasa. Quite frankly, Sir, a week or ten days after the event to ask one to come down to Mombasa to produce a firearms certificate strikes me as most unreasonable and I would suggest, Sir, that there should be some discretion—I cannot move an amendment. Sir, there has been no notice given which the Minister can lay down by

[Sir Charles Markham] instruction to prevent anybody being treated, Sir, in a cavalier manner, and made, perhaps, to suffer because he has not got his licence on him.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): I can readily give the hon. Member that assurance, Sir.

Clause 6 agreed to.

Clauses 7, 8, 9, 10, 11, 12 agreed to.

Clause 13

SIR CHARLES MARKHAM: Mr. Chairman, I have one small query, perhaps the Minister can help me. During the course of his speech he talked about the increased fines and mentioned £175. Whether that was a slip up and he meant £75, before I go on I would like an explanation.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): What I said yesterday (and I think I am right is that although the maximum penalty is Sh. 5,000, the actual maximum fine that has been awarded by a court in point of fact is £175. The courts have never gone up to Sh. 5,000.

SIR CHARLES MARKHAM: Sir, I do not see it, because the amending clause now is making it Sh. 5,000 before that it was Sh. 2,000, or six months. I only want to get this quite right, Sir, I see the Solicitor-General is longing to put me right.

MR. WEBB: The maximum fine has been Sh. 5,000 for some time, since an amendment to that effect was made by Emergency (Amendment of Laws) Regulations, which this clause replaces.

SIR CHARLES MARKHAM: In other words I am very grateful, Sir for that, I withdraw all my remarks.

Clause 13 agreed to.

Clauses 14 and 15 agreed to.

Clause 16

SIR CHARLES MARKHAM: I must apologize to you Mr. Chairman, and the House for raising issues, but I think that this is an important one. During the course of his speech yesterday, Sir, the Acting Solicitor-General made certain remarks regarding the calibre of air guns,

and I interrupted him and gave the impression of challenging him with regard to the .22 calibre air guns. My information was based on one particular firm in Nairobi, who are advertising the fact that all calibre air guns are available in stock; with the result that I thought from my information that all these varieties were available, I have not had much opportunity this morning of checking up, but in case the impression has been gained abroad that these firearms are available in spite of the assurance given by the Acting Solicitor-General, I would like to withdraw, Sir, the allegations, if the impression was gained otherwise.

At the same time, Sir, I would like to raise one other issue regarding these toy pistols, or other weapons which are being used. I do not quite know, Sir, under this clause 16, whether a pistol made of wood, which I suppose some of us used to make in our youth, would qualify as being an offence, because we do know for a fact that it is very hard to judge if you are held up by a pistol whether it is a toy or real, and if by chance you think it is a toy and you are wrong, then, Sir, you have to raise the question elsewhere. Therefore, I am wondering whether the imitations we have seen made of wood and stuck through a pocket with a little black barrel sticking out of a torn coat such as I have at the moment, would be an offence as this clause implies, or whether that would have to be subject to some other rule or additional regulation not qualified, I think it is important, Sir, because particularly in the dark or at dusk it is very hard to distinguish between the two, and quite frankly, if I was involved on the receiving end, I would hesitate to argue either way.

MR. WEBB: There is no question about it, I think if a pistol, whatever it is made of, gives the appearance of being a real one it comes within the definition. What, of course, the hon. Member is going to do when I go to him like that in the dark and do not have a pistol in my pocket at all, but merely my hand, I do not know.

SIR CHARLES MARKHAM: I realize the difficulties, but if he does that to me I will take the risk. The thing is, would it be an offence, Sir, if somebody was caught by the police and the witnesses

[Sir Charles Markham] stated that he had given the impression of having a pistol, would that be an offence by giving the impression of having a pistol or lethal weapon, so that it would make the person surrender his cash that much quicker.

MR. WEBB: I do not think I could give an answer for certain on this. There is no question that it would not be an offence under this Ordinance, because the person would not have anything that even purported to be a pistol. But it might be an offence, I will look into the matter and inform the hon. Member later, but perhaps the Penal Code might cover the matter. The instance which I have just given of the finger in the pocket might come within that, but it certainly would not come within the purview of this Ordinance.

Clause 16 agreed to.

Clauses 17, 18, 19, 20 and 21 agreed.

Title agreed to.

Clause 1

MR. WEBB: Mr. Chairman, may I invite you, as my hon. and learned friend, has in the past, to use your powers to convert 1959 into 1960.

Clause 1 agreed to.

The Excise Tariff (Amendment) Bill

Clause 2 agreed to.

Title agreed to.

Clause 1

MR. WEBB: Mr. Chairman, my invitation in this Bill is a little wider than in the past. Not only, Sir, will I ask you to convert 1959 into 1960, but I would also ask you to delete No. 2, because although this would have been the second amendment to this Ordinance in 1959, it is the first, and perhaps the only one, in 1960.

THE CHAIRMAN (Mr. Bechgaard): I will effect those amendments.

Clause 1 agreed to.

The Crop Production and Livestock (Amendment) Bill

Clauses 2 and 3 agreed to.

Title agreed to.

Clause 1 agreed to.

THE CHIEF SECRETARY (Mr. Coult): Mr. Chairman, Sir, I beg to move that it be reported to Council that a Committee of the whole Council has considered the Firearms (Amendment) Bill, the Excise Tariff (Amendment) Bill, the Crop Production and Livestock (Amendment) Bill and approve all these three Bills without amendment.

The question was put and carried.

Council resumed.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentick) in the Chair]

REPORTS

AND THIRD READINGS

The Firearms (Amendment) Bill

MR. BECHGAARD: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has been through the Firearms (Amendment) Bill and directed me to report the same without amendment.

The question was put and carried.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Mr. Speaker, Sir, I beg to move that the Firearms (Amendment) Bill be now read a Third Time.

THE CHIEF SECRETARY seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

The Excise Tariff (Amendment) Bill

MR. BECHGAARD: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the Excise Tariff (Amendment) Bill and directed me to report the same without amendment.

The question was put and carried.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir, I beg to move that the Excise Tariff (Amendment) Bill be now read a Third Time.

THE CHIEF SECRETARY seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

*The Crop Production and Livestock
(Amendment) Bill*

MR. BUCHANAN: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the Crop Production and Livestock (Amendment) Bill and directed me to report the same without amendment.

The question was put and carried.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. MacKenzie): Mr. Speaker, Sir I beg to move that the Crop Production and Livestock (Amendment) Bill be now read a Third Time.

THE CHIEF SECRETARY seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

MOTION

ABOLITION OF COMMON ENTRANCE
EXAMINATIONS

MR. ARAP MOI: Mr. Speaker, I beg to move:—

THAT in view of the serious and unpleasant situation which arises from large numbers of African children being turned out after their fourth year at school, this Council urges Government to abolish the Common Entrance Examination and provide education for all African children to the end of intermediate stage without interruption.

Hon. Members, Sir, seem not to be interested in the abolition of the Common Entrance Examination. I hope, anyway, that everyone will take keen interest in it, because this is not a racial problem but a national problem.

One of the gravest problems which face Kenya today is the continuation of the Common Entrance Examination. Ideally, Africans would prefer to have no barrier at all at the end of the fourth year at school; in fact, this barrier presents many parents with an insoluble problem. What can a parent do with a child who is not offered a place in the intermediate school? In fact, the child has not failed, but there is no place for him in the intermediate school. This barrier, Sir, is unknown to children of

other races or other communities. It is high time we had in this country a unified system of education in Kenya.

At the moment, Sir, we have four systems of education: European, Asian, African and Arab. Those who have manufactured such policies on racial compartments are perpetuating troubles in future. I am now thinking of this problem of education which is not affecting one particular race but which is affecting everybody in this country, and those children who are turned out after they have completed four years of education are not only going to be a menace to themselves but also to their parents and to the community as a whole. Therefore, to me, it seems as if the Government wants to embark on a cheap policy so as to provide education for a few children who join the intermediate schools. In fact, I should like to mention in the first place that the enrolment of children in Standard I in 1958 was 169,846; and in Standard IV there were 112,997. Now, those in Standard IV sat for the Common Entrance Examination. Just over 25,000 passed and were admitted to places in the intermediate schools, this is pathetically low. Now, in this year just over 80,000 will not be allowed to proceed. I do not want to belittle the Government's good intentions because, in some areas, some children were allowed to repeat but the majority were told to go out. In Nyanza Province this year, for instance, the education officers there have been telling the African education officers that there should be no repeating. Mr. Speaker, Sir, a child at the age of nine or ten has not yet attained the age of reason, and if the principles of education, as put by various educationists from Rousseau, and many others, for 200 years, are taken into account, then the present system in Kenya does not take into account the fact that the child of nine or ten has not attained the age of reason. How do you expect them to sit any examination and reason out?

It is also interesting to find out that the Government of Kenya has been thinking that they were expanding the educational system, particularly African education, so as to allow other children to complete their education. But three or four years ago the Government indicated

[Mr. arap Moi] that they were going to implement compulsory education in Nairobi. This program has not yet been completed, although it is under way. Nevertheless, the Government ought to start a secondary school here in Nairobi, and in other major towns, too, Sir, in order to absorb children from such areas.

So far as education is concerned, the four-year primary school system is going to be a social problem, as I have said before. Education is not only concerned with imparting knowledge but also with influencing behaviour and human behaviour is motivated at least as much by sentiment as by reason. Most of those who are turned out at Standard IV level, as I have already said, cannot reason and these children are going to be of no use to their parents; they are not going to be useful to the country, and yet the Education Department says that by providing four years of education the children are gaining experience in farming, in skilled work, and so on and so forth. I do not see how a child of eight, nine or ten years can be of any use in any skilled work.

Many education planners might also advance the view that in other countries this problem of providing education for all children is becoming a problem, and a difficult one, but, Mr. Speaker, in Tanganyika, for instance, they are not sitting down. There is a plan for six years of education for children and providing the finance for such a plan. I do not see why Kenya should not embark on such a policy because I think that we in Kenya are much more ahead than those in Tanganyika. At the same time, looking at the figures of children in primary schools throughout Kenya, and if I may quote the figures for 1958 they are as follows: the girls were 160,211 and the boys were 370,124, making a total of 533,335. Now, in the other territories, Tanganyika for instance, they are now approaching 400,000 and they are planning a six-year plan. Now, I should like, Mr. Speaker, to say this: that we cannot expect the African contribution to development of the country while limiting the educational facilities.

The argument is often advanced by the Government that they cannot proceed or advance because there is no finance. Previously they were advancing the idea

that they had no teachers to equip these schools, but now they are saying that finance is the reason. But I should like to suggest to the Government the following points. Before suggesting such points I should like the Government to know that the Beecher Report is now dead and that a proper and comprehensive system of planning should now be set up, and, Mr. Speaker, I should therefore like to suggest that a Commission should be set up immediately to examine the whole system of African education with a view to abolishing the Common Entrance Examination and also to work out an integrated education policy for the country as a whole. Kenya should also approach Her Majesty's Government to assist in its initial stages of educational evolution or educational development. That the emergency teacher training centres should be established in almost every district to solve the problem; fifthly, Sir, teachers' pay should also be examined. Further, such a Commission should also ask local authorities to assist in educational development. The African district councils are very much willing to help promote educational facilities for African children in all areas where local authorities exist. But, Mr. Speaker, the Government, after finding that the local authorities are interested in the education of their children. The Government has made a ruling, emanating from the Minister for Local Government, that African district councils must not in future spend more than 50 per cent of their revenue on education except in certain areas. But if certain African district councils are willing to provide money for education then why should Government step in? I am not suggesting for a moment that services should be for health and other services should be curtailed but I am suggesting that if a district council would like to embark on a comprehensive school scheme of providing money for schools then the Government should not stand in the way. In this connexion, Sir, I always say that the African parent is contributing a lot towards the education of their children, not the Government alone. For instance all the capital for building primary and intermediate schools is being provided by local councils without Government assisting them, and also it would be wrong if I were a parent with a child in a primary school to find that my child

[Mr. arap Moi] has been deprived of a place in the intermediate school when I had provided the money to build the intermediate school. What would my feelings be? What would the answer of the Minister for Education be to such a parent?

Now, Sir, I want as many Members as possible to contribute towards this Motion so I will make few observations now and allow others to speak. Mr. Speaker, Sir, this problem of the Common Entrance will not be a problem for only one race. Many of these rejects will turn to criminal occupations and many of them, unless employment is provided, will be running out, and they have already caused great anxiety among local authorities because they are becoming undisciplined, and unless the Minister for Commerce and Industry provides local industries to absorb such people, and also by having youth clubs to help such youngsters, then I assure the House that there might be trouble in the future and I urge the Government not to think as they have been thinking previously that wherever a Motion is brought in they think of an amendment—and I remember this happened last time to the Motion which was moved by the hon. Member for Central Province—with the words "as soon as possible." These words do not provide with a solution. The Government should act and regard it as a matter of urgency, and Mr. Speaker, I should like to end by saying that everybody should contribute so as to find a solution for this very vital and important problem which is going to face this country. We are moving towards nationhood and it is not only going to be a social problem but it also going to be a political problem, and unless it is solved as a single issue, as I have said, then it is going to give us a headache.

Mr. Speaker, I beg to move.

—MR. MULIRO: Mr. Speaker, I am very happy to second this Motion moved by my hon. friend the Member for North Rift.

When we look at the problem of education we must first of all consider the problem of the young adolescent. I think that the educational system in this country applicable to the Africans is the most unfair piece of work that a country which is interested in its citizens could

ever devise. The adolescents, who should be under the care and guidance of experienced teachers, are thrown out into the world and they become either wholly illiterate or semi-illiterate. Hon. Members must know that a little knowledge is a dangerous thing and indeed we know that the African children are only getting a little knowledge, a little education, and that then they are thrown out.

In fact, the thing we want to abolish, the Common Entrance Examination, is no longer an examination. I say it is no longer an examination because this examination used to be an examination in the 1920s, when I sat for it, but now it is not an examination, because one would now find that the number of schools actually does determine the number of children which have to be scrutinized and then we say that they have passed. One of the reasons why I say this is not an examination at all is, for instance, because in North Nyanza alone we had about 14,000 school children taking the examination last year and out of that lot only 2,800 or so are allowed to go on. Can anyone imagine that the remaining 12,000 children or so failed the examination? No, the number which was taken was determined by the number of schools which we have got in North Nyanza. Now, this is only an example of what happened throughout the whole of Kenya, and if one could look at the statistics throughout Kenya one would find that hundreds or thousands of children who sat for the examination last year actually are a mere waste. Therefore, Mr. Speaker, this examination is a waste of human material. It was not only a waste of human material but it is also a waste of money in this country. It is a waste of time to build a school in the hope that the teacher in the school will actually do some good work when the money will be spent on a child who will sink back to ignorance after being refused to proceed with his education at Standard IV level. The policy of sending children back to complete illiteracy can never be regarded as a good policy for any country in this world, particularly a country which claims to be a democracy, because if we want our democratic community then its citizens must be well educated.

Now, my hon. friend the Member for North Rift has already said that bad

[Mr. Muliro] education is going to have serious political implications in this country because ignorance can be exploited to the fullest possible extent and anyone who is interested in this solution must take it very seriously now and not at any other later stage because our aim in this country should be the elimination of ignorance from both the young people and others.

Now, as long as our educational system continues, on the contrary, to maintain a number of illiterate or semi-illiterate children in this country who are going to be bad citizens of this country, we are not getting anywhere, Mr. Speaker. Now, I would define the Kenya educational system as applicable to the Africans of this country as education for ignorance. I say it is education for ignorance because millions of the children who are being thrown over are going to think with complete ignorance and they will be a menace to this country. That is the main reason why I contend that this education is an education for ignorance. If we want to go forward assuredly we must change our education to be the education of citizens. Let us train and educate these children to be good citizens of tomorrow. Some educationalists argue that one should educate a child to live a good life and I think that is a very good criterion. We should not educate the children to give them a bit of knowledge in order to make them go-birds because once they become go-birds they are of no use—they are no use to us at all. And a good citizen must know what he stands for; he must know what he defends by reading and listening to the wireless. And also when the material which is being disseminated to him, either political or social or economic—unless he has been given sufficient time, not thrown out at the age of nine or ten, he will never achieve that at all. And, as my friend already has suggested, the only solution probably in this country is to create emergency training centres. If we have had emergency camps to deal with problems, why do we not have emergency training centres to get a sufficient number of teachers to go on teaching in these schools. The Minister for Education and the Director of Education will get up in this House

today and they will tell the hon. Members that they have not got the number of teachers; they have not got the money to build schools; and the money to pay the teachers. But I would say that what we want is a teacher and a child. We have got the children, so the only thing we want are the teachers. One could stand under a tree and educate the children. Most of us were educated under a tree. In fact, I only began sitting in a classroom in 1939 or 1940. But before that we were always taught under trees, sitting on stones and big logs of wood. Now, if we are to campaign seriously, wipe out ignorance, the Education Department must not only have emergency teachers but also they must have emergency temporary classrooms. Those will be the trees everywhere and we shall see how we can deal with this problem.

But one thing I would like to say is that at present the Education Department, the Minister for Local Government—who has sneaked away out of this House today—has moved a ruling which my hon. colleague has already put across that African district councils should not spend so much money. It is very true that they should spend not so much money, but I think education is a national issue which should never be left to African district councils. And it is something that you cannot even think of—the race should deal with itself—the Asian community should deal with the Asian education, the European community and the African community. No: we want one society and therefore education is a national issue. It cannot be reduced to district councils. It cannot be reduced to a race. It is something that must be tackled by Kenya as an emerging nation. And therefore more money should be provided for education of all children in this country and not to say that some should be left to African district-councils to deal with that because if we are to leave it to district councils these district councils will develop at their own pace. For instance, the Northern Frontier District would never worry about having African district councils for education and surely we cannot let the Government of this country say, "Well, the African district council is doing nothing and therefore we will not worry about it." Everybody

[Mr. Muhro] must be concerned about the development of this country. While we still have millions of people in this country in ignorance, the whole future of this country, the whole civilization and everything is being endangered because ignorance has no bounds. Once a man is ignorant he has no value of any kind. He can destroy anything. He does not worry because it has no meaning for him. And, therefore, our aim in this country, I would urge all hon. Members, should be a campaign against ignorance and in this campaign against ignorance we should put all education in this country as a national issue and work for complete integration of the educational system so that all children are given adequate facilities for their mental development.

With these few remarks, Mr. Speaker, I beg to second the Motion.

Question proposed.

MR. MILLER: Mr. Speaker, Sir, I rise to propose the amendment of which written notice has already been given by me, namely, the insertion of the words "as soon as practicable" after the word "Government" in the third line of this Motion.

Mr. Speaker, Sir, I have very considerable sympathy with much of what the Mover and the Second of this Motion have already said. I merely propose this amendment because it is and it always has been and always will be the policy of this Government to provide universal primary and intermediate education for all as soon as it can be done. And this in itself involves the abolition of the Common Entrance Examination.

I would like, Sir, first to speak on this question of the abolition of the Common Entrance Examination which none of us like any more than we like any other kind of examination. I must remind Members that the only reason for the continued existence of this examination is the simple fact that at the moment we only have accommodation in Standard V—the bottom class in the intermediate school—for from 25 per cent to 33 per cent, varying from district to district in this country, of the children completing Standard IV. Of hon. Members opposite who have objected very

none of them has as yet suggested, either in this debate or other debates which we have had on this subject, any alternative for sifting out these candidates. If they could suggest to me any alternative, I, of course, would be very willing to consider it. I must point out too, Sir, that this examination admittedly is an examination of children who are very young, but it is only the sort of end-of-term examination which we have all taken—all hon. Members in this House have taken—at all stages of our career. Nevertheless, nobody would be more pleased at its abolition than myself and I hope in the course of my remarks in this debate to be able to give hon. Members some indication of when this happy event may be expected in at least certain areas of this country.

I fully realize, Sir, the difficulties of pupils leaving school at Standard IV but I must point out that the introduction of a basic four-year course for African pupils in this country was the recommendation of a Commission of very strong educational experts, namely, the Binns Commission, which visited East Africa in—the think it was—1951. And I think that there is a tendency to overlook the value even of a four-year course. It is true that even in a course of this kind a child does gain literacy in the vernacular. He does gain some knowledge of the elements of English and he acquires the basic skills in reading, writing and arithmetic and, perhaps even more important, he has the advantage of four years' discipline, supervision and character training. I must point out, Mr. Speaker, that even this course is, therefore, of some value, although I entirely agree with hon. Members opposite that the opinion of some years ago that a four-year course for everybody was the first thing to aim at—I agree with them that experience has, in fact, proved that this is not really the case. And I think—in this country—that the admirable efforts that have been made to provide a four-year course for a very wide range of children and then take a very much smaller selected number on to the next four years, I think perhaps experience has shown that this is wrong, and that we would have done better to concentrate our resources at the start and to say that we realize we cannot educate everybody to the stage we would like to

[Mr. Miller] at school to fewer children than attend at present. Even if everybody reached the stage of going through eight years, I am quite sure then there would be a clamour from my hon. friends who would say, "What is the use of educating somebody for eight years! All must go on to secondary schools. What is the Government doing about it?" As I say, I think perhaps it might have been a wiser policy in the first instance to say, "We cannot educate everybody, but we will see that to those we do educate we give a reasonably long education."

However, we did not do that and it has been the policy of this country over a period of years—a policy backed by experts—to give this four years' minimum and then to give a further four years and even a further four years to as many people as we possibly can and that is what we are trying to do and I hope, as I say, in the course of my remarks to show you that we are doing much more in this respect than some people suggest.

This question of priorities in development, of course, affects every country in the world and I would like to refer, if I may, Sir, to some remarks which were made on this matter by Professor Lewis who, at one time, I believe, was educational adviser to the Ghana Government. In a letter to the *Economist* in January, 1959, he pointed out that when Colonies talk of self-government they usually think in terms of votes and Ministers. But he suggested that an equally important aim would be to ensure that there will be enough secondary schools to accommodate 4 per cent of each generation. He realized, however, the expense of doing this and he stressed the necessity of restriction at the primary stage. He felt, in fact, that it would be optimistic to aim at primary education for more than 50 per cent of the whole primary age range if a country is to be able to afford secondary education for 4 per cent of the whole range. I think that is an important point to remember and it has a great bearing on our problems in this country, because in some districts in Kenya we have, in fact, achieved universal primary education and for the whole country we have obtained an average figure of 65 per cent to 70 per cent. It appears, therefore, that

we may already have out-run our resources for primary education in some areas.

I would like also to point out, Sir, the progress that we have made in increasing intermediate provision in this country. The matter was, I believe, debated in this House last in May, 1958, when the number of intermediate schools was 597. This number has risen to 754 in 1959 and it is estimated to grow to 856 in 1960—an increase of 259 intermediate schools since the last debate in 1958. Two hundred and fifty-nine more intermediate schools since 1958. Further plans envisage an additional 292 by the beginning of 1962. I do think, Sir, that these are figures which show that we are not standing still, that we are tackling this problem as earnestly as we possibly can.

Specific reference has also been made to the programme for universal primary education in Nairobi City. Now, the facts here, Sir, are that at the beginning of 1959, places were available in Standard I for all African children of the correct age genuinely resident in Nairobi. Of these places, an estimated 90 per cent were filled. By the end of the present year, 1960, all pupils—I say all pupils—in Standard IV in Nairobi schools will be able to pass on to Standard V with no bar whatever in the shape of Common Entrance or any other examinations. They will then be able to proceed right to the top of the intermediate school and we can, therefore, claim that in Nairobi, at any rate, 1960 will see the disappearance of this much disliked Common Entrance Examination. I must utter one word of warning only, and that is that these plans apply only to that is, the children of whom one or both parents are actually working in the City.

We have worked out the number of places in Standard I and the number of places in Standard V necessary to accommodate these children. But we do appreciate that there may be a great temptation to children living outside the City in areas where it has not yet been possible to abolish the Common Entrance Examination—there may be a great temptation for those children to flood into the City to take advantage of these facilities. We shall not be able to provide for them. We can provide universal education for

(Mr. Miller) those who have the right to be here and for those who have the right to be here only. And I hope that I can rely upon the co-operation of my hon. friends opposite in trying to see that people do not flood in here and take advantage of facilities which are only provided for those people who have proper and adequate reason for being here.

This expansion, of course, depends too upon a corresponding increase in the number of trained teachers for whilst it is not the policy of Government to increase the number of primary teacher training colleges for Africans in this country, yet we do realize that we must do something special for Nairobi. We have therefore agreed to extend the work of the Special Centre which at the moment concentrates on the training of Asian teachers using the English language as the medium of instruction right through the school. We have decided to extend that work to one school in Pumwani where we shall train teachers—African teachers—on similar lines to use English as the medium of instruction in African schools in the City.

Turning to the other big urban centre of Mombasa, hon. Members will have read with interest and, I hope, enthusiasm of the municipal rate of Sh. 8/50 per African taxpayer which has now been authorized for educational purposes in Mombasa for the following three years. Aided very greatly by this, it is estimated that Standard V streams in Mombasa will rise from six in 1959 to 25 in 1964 and I hope and believe that when this 1964 target is achieved the Common Entrance Examination will be buried in Mombasa also. It may, in fact, be buried even earlier.

I do not wish, Sir, to emphasize financial difficulties which have already been explained in the past. Sir, to hon. Members by my hon. friend, the Minister, and myself. Suggestions have, however, been made in the course of this debate that local contributions for education would be forthcoming but that the Education Department has refused them. This, Sir, is quite untrue and I would like to refer in particular to the position in the Kiambu District. In that district at the beginning of 1958 the primary fees were increased from Sh. 20 to Sh. 32

and intermediate fees from Sh. 45 to Sh. 62 with the express object of meeting recurrent costs of additional intermediate schools—that is to say, additional intermediate schools which were not in the original programme. As a result 20 additional schools were opened during 1958, 12 in 1959 and 12 will be opened in each of the next three years. This is an example of self-help which I think other districts might well follow. In some other districts similar offers have been gratefully received. In Fort Hall, Nyeri and Embu, for instance, the tuition element of school fees has been raised to accelerate progress, with the result that Fort Hall has opened another 15 intermediate schools, Nyeri nine and Embu five over and above the normal expectations. In 16 other districts also school fees have been voluntarily raised to relieve the financial burden on African district councils which could not otherwise have carried on normal development.

I would like, Sir, at this stage if I may, now that I see the hon. Member for Nairobi Area has come in to repeat to him the good news that by the end of 1960 we shall be able to abolish the Common Entrance Examination in Nairobi and all children in Nairobi schools will then be able to proceed without any bar to Standard V.

Returning, Sir, to the unfortunate plight of those who have to leave school at the end of the fourth year, I must refer to an important field of activity at the moment doing a great deal to help such people. I refer to the Kenya Association of Youth Clubs. In a period of just over two years over 100 such clubs have been registered and established and I believe the total membership approaches 20,000 and I believe too that the majority of the members are people who have either never been to school or who have had to leave school at Standard IV. These clubs are full-time institutions providing a variety of vocational training including agriculture, veterinary work, carpentry, building and other crafts. I mention this, Sir, just to show that these unfortunate children who are sometimes called the "Dead End Kids" are not by any means neglected in our planning.

I have already stated, Sir, that I have no desire to expand on our financial difficulties which have already been

(Mr. Miller) stressed frequently before. But I must emphasize again that in a country of limited financial resources like Kenya we have to work on a system of priorities. I would also remind the hon. Mover, who seemed to think that we had no plans at all, of the plans for the expansion of primary and intermediate education that have been made for the three-year period 1960 to 1962. I would also refer again to the special investigation which the Department is now making into the special problems affecting the Nyanza Province. We shall certainly not cease planning and certainly not refuse offers of financial assistance. We regard the planning of district education boards and we hope that every form of suggestion will be made to these boards for their consideration and I assure Members that they will certainly receive careful and sympathetic consideration from me.

It may well be in the past, Sir, we have concentrated too much at the bottom and too little on the middle and the top of the education ladder. I hope, however, that I have said enough today to show we fully realize the needs of the middle rung and are doing our best to satisfy them as quickly as we can. At the same time we are not unmindful of the pressure that his very development must bring at the top, or the secondary rung and we must therefore develop our system as a balanced whole.

With these words, Sir, I beg to propose amendment.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson) seconded.
Question proposed.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): The amendment is before the House. I rule under Standing Order 62 that the matter of the Amendment cannot be readily severable from the matter of the original Motion and therefore that any future speaker will be held to be discussing both.

MR. MUMBI: Mr. Speaker, Sir, I rise to oppose the Amendment and to support the original Motion.

I have been connected with the field of education for quite a long time and I am surprised, Sir, that in 1960 Govern-

ment fails to see and to understand the problem that is facing the Africans in regard to the early stages of education of the African children.

This expression of Government "as soon as practicable" or "as soon as possible" has been said so many times in this House that it has become a plain sort of thing.

Mr. Speaker, the fact must be taken very seriously in that, taking for example the figures quoted by the Mover of the Motion, if in 1958/59 there were some 169,846 children, or thereabout, and only something in the neighbourhood of 25, to 33 per cent could get at least the full eight-year education; I believe the wastage is so great that there is no need to give this 25 to 33 per cent any education comparable with the wastage that results as a result of the introduction of the common entrance examination.

The Minister, when speaking on the Motion, asked what alternatives we have given to Government in order to make it possible for Government to abolish the Common Entrance Examination. I remember, Mr. Speaker, as a trainee I taught in 4 number of schools in Uganda and I also taught in a number of schools in Kenya. In Uganda I am sure they have no common entrance examination. Common entrance was introduced in Kenya at a recent date and as a result of the Beecher Report. What is happening in Uganda? What was happening in Kenya before the introduction of the common entrance? I believe the hon. Director of Education and the Minister have the answer to that. The answer is this, Mr. Speaker, it is a fact that Kenya teachers keep records of the progress of every child from Standard I to Standard IV and the headmaster of any one school knows precisely what progress a child has made during the four years. I believe the education authorities trust the work of the headmasters and the teachers employed and, therefore, if a teacher is satisfied that a child has attained the qualified standard of education for promotion to the next stage of education, I see no need for any examination to be taken by any children at all. I believe, Mr. Speaker, if the educational authorities—and by this I refer to the Minister and the Director of Education—pursued the methods of weeding out or promoting

[Mr. Muimi] children to the next stages of education on those lines, there would be no difficulty whatsoever and there would be no necessity for the Common Entrance Examination.

The worry of the Africans today is the number of children who are turned out from school at an early age—at the end of the four years' education, not because they have not the knowledge for them to go further than the fourth standard of education, but because the factor determining the promotion to the next stage of education is the number of places available in the intermediate schools, and what the African people want in this country is that they want to be placed on the same educational policy like any other community in this country. They want the primary stage which ends at the fourth standard of education to be abolished completely and the African children to have a full primary education, running from standard one to the eighth standard.

Now, during this stage the Africans feel that there should be no barrier for any child who secures a place in any school.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) left the Chair]

[Mr. Deputy Speaker (Mr. Bechgaard, Q.C.) took the Chair]

He or she should be allowed to go on with her education until she finishes her eighth year education.

It has always been argued by Government that education for African children must be based on the amount of financial resources available. I am surprised, Mr. Deputy Speaker, that there are a number of private bodies in this country who are prepared to give African children full eight-year education without even asking for any grant-in-aid from any Government, but because of the present set-up of educational policy in this country, these people are banned from exercising what they think they should. I feel, Mr. Deputy Speaker, that the barriers which prevent these people from establishing aided schools should be lifted and that, in addition to what the Government, as the proper authority for dealing

with the education of African children is doing, these people should be encouraged to do the same.

Now, Mr. Speaker, the Director of Education last year, I remember, argued that in addition to giving a certain amount of education to the children at the fourth stage of education, these children are better disciplined, they are taught cleanliness, they are enabled to read and write and they are taught some moral standards. This is well and good, but, Mr. Deputy Speaker, what happens when a child, say, of 11 years leaves school? He or she may have been able to read and write a little and to be able to count up to a certain stage. She may have had some sense of discipline or moral behaviour, but as soon as the child leaves school, in no time that knowledge which has been imparted to him or her is forgotten and then the child is no better than when she began schooling. That is why you find in the country we have so many unemployed young people who, at one stage, were school children. They are more of a nuisance to this country than they would otherwise have been if they had been given sufficient education to enable them at a certain stage to train themselves to become useful citizens.

The last point, Mr. Deputy Speaker, I would like to raise is the question of the teacher training. It has been argued that we have not sufficient trained teachers in the country. It is a surprise that a great many of the teachers are now leaving the teaching profession and joining other professions. We were glad the other day when Government agreed to look into the conditions of service of the teachers, and I am sure that if these conditions are effective, there is no doubt many people will come to the field of education. Not only this, Mr. Deputy Speaker, but I am aware that a great many young men and women are being turned out as trained teachers for the schools and if Government wishes—and I am sure they can—they can make a beginning this year in that all children in the country who have attained the fourth stage of education, who have reached Standard IV, should sit no examination at the end of this year but they should be allowed to continue until they reach the eighth stage.

[Mr. Muimi] The Director of Education has told us that Nairobi will see the disappearance of the Common Entrance Examination by the end of this year. I must tell the House that in the rural areas there are better facilities for building and many other things than there are in Nairobi. I am sure what the Director of Education and the educational authorities have in mind is Government shouldering the whole burden of education in Nairobi up to the eighth standard, in other words, although Nairobi will be required to pay a certain amount of money, towards the capital expenditure of the buildings and many other things, but people in the country have the materials, labour and many other things handy. In most cases, besides providing the labour they do many other things and it would be much easier to introduce the system of full primary education in the rural areas than it is in the urban areas. I am sure the Director of Education and the Minister for Education will reconsider the position and implement the same scheme as they would do for Nairobi in all the rural areas and not merely where it is said to be practicable.

May I repeat, Mr. Deputy Speaker, before I sit down, that one solution for abolishing the Common Entrance Examination is taking into account the records and recommendations of the headmasters of primary schools and, as a basis for promotion, accepting the principle of promoting all the children who have attained the Standard IV stage to the next stage, Standard V class, until they attain their eight-year primary education.

In passing, Mr. Deputy Speaker, I might say this, my experience when I was in the Education Authority in the districts, I come from where certain children failed to get places, not failed the examination, but failed to get places in the intermediate schools, was that if they were too young to benefit by the four-year education, they were given another two years of what they called primary top education. Now at the end of the two years of extra primary education many of these children were so good, even far better than most of those who had at the end of the fourth standard qualified to go to the intermediate schools, that they had to be taken into

the intermediate schools and I can tell the House that some of these children who were promoted from the top Standard Six into the intermediate seven have done much better than the former.

Again, some of these children who were given an extra two years of education, at the end of that two years they were better educated than they were before, they were much more grown up than they were before, and they could pick up some sort of training and I can tell the House I know very many of them who are very useful citizens in this country. That is why, Mr. Deputy Speaker, I feel that the Standard Four education does more damage to this country than anything.

I must also say, Mr. Deputy Speaker, that the greatest enemy of development and advancement of this country is the poor education that the African children are receiving. I know, Mr. Deputy Speaker, as the hon. Director of Education has pointed out, that we cannot give every child the highest education that he or she requires. But at the same time I find it most unprofitable to give children education that in the end will make them far worse people when they grow up than they are at the moment, and it is for this reason, Mr. Deputy Speaker, that I feel Government should see its way to giving African children full eight years' education as from this year.

I beg to support.

MR. NGALA: Mr. Deputy Speaker, Sir, I stand to support the original Motion, and want to oppose the amendment.

Now the Director of Education has asked why we have not given him any alternatives that would make it possible for the African child to get seven or eight-year education. Now it must be understood that we have given these alternatives and very constructive views in the past, but it looks for some mysterious reason, that the Education Department has not at all taken them into consideration.

MR. MILLER: Mr. Speaker, Sir, on a point of explanation, what I said was if we can only provide intermediate education for one third of the people coming for four years' education, thus if any hon. Member could suggest to me how

[Mr. Miller] we could make the necessary selection without such form of examination. I shall be very pleased to hear any such views.

MR. NGALA: Mr. Speaker, I think the Director of Education for that explanation, but I would like to point out that the Education Department gave us this promise two years ago on putting things right as soon as it is practicable, but the efforts that have been made by the Education Department have been, in my experience, in some areas of the Coast completely unsatisfactory.

I will take one specific example, Sir, of a district which is very backward in education, it is Kwale district. Now in this district, Sir, the Education Department is only providing in the whole district two intermediate schools and six new last year and this year, 1960. Sir, I understood the use is going to be only one intermediate school in a backward district like that over 100 children may be in the area. The African District Councils have a procedure to spend the money. The Government should take the responsibility of the money of education, but they are reluctant to spend more. We have also the Education Department that there are no teachers, although the African District Council is required to see as its expenditure on education and provide night-school education or similar education for their children.

Now this question of having no teachers in the same province has been discussed for a very long time and suggestions have come from the original Education Board and in some places these suggestions are suggestions that would help in the way in which that could be done by teaching in intermediate schools.

Now the question from the Minister of Education has been very discouraging. I would like to know exactly what the Minister is doing about it.

Now I am backward here like that when the Education Department has said to them with about 10 children, 5000 to 6000 children, the Education Department has said to them that they should take the responsibility of the money of education, but they are reluctant to spend more.

for that backward district like Kwale district? If a backward district like that cannot get provision in the foreseeable future, how can a progressive district which is only getting 25 per cent of its children into Standard Five get any Standard Five education at all? This pace of development is very discouraging and very sad, Sir, because the sufferer in this case is the African.

I pointed out last year that the Europeans have a standard of education created, and a good one too, The Asians have also a standard which only needs a little improvement, but the Africans have no standard, and this is what is the main concern among the Africans. Today it is reflected by the fact that some Members—almost all Members—have left the House because they are not interested in the question. We would like the Minister and the Director of Education to take this matter very seriously because it concerns a very serious difference between the communities in one system of education in one country, and in that way, as we expressed last year, this is a very serious form of discrimination—the system of education in this country.

The other suggestion that we gave last year, Sir, was the possibility of creating local education authorities, and if these local authorities could put in in the way of funds as much money as possible to make it possible for African children to get eight years education. This year in Mombasa, for example, Sir, we are faced with the question of the African paying Sh. 50—the taxpayer—and the local authority is doing nothing. The local authority in this case is a municipal council, and I would like to know from the Minister or the Director of Education what he is doing to persuade the local authority in Mombasa with all the profits they get out of the African power company, what they are doing to contribute to the African education at the level of the intermediate. I appreciate the fact that the Africans have done a great deal of schooling in Mombasa. I do appreciate that very much, but I am very much disappointed that the Central Government and the local government are coming forward with empty hands. This is a very serious situation and should be

[Mr. Ngala] Now the question of teacher training, Sir, is very amusing, because we have always been told that the teacher training development would be given some consideration, and I remember asking a question a few months ago, when the Minister said that his conference in Oxford would probably benefit this country and arrangements probably would be made so that this country can benefit as quickly as possible. I would like to know in the present circumstances why the teacher training facilities are very much lagging behind the development of the intermediate schools. I would like to know whether the Minister is stepping up this idea, and passing this idea so that the country can benefit and the problem of teacher training can be met.

Now we also gave another suggestion last year when this matter was raised—I think it was by the Member for Meru. The idea of youth clubs. There are some pupils, particularly in the Mombasa Area and the neighbourhood of Mombasa—there are some pupils who would very much benefit through the creation of youth clubs—or the creation of local industries at a very low level, but nevertheless very helpful as far as education is concerned. Now we suggested that such things should be created and brought into existence in the educational system. As far as I know there is not such a thing in my area, and I do not think any Member has had a change since the last discussion on this matter.

Now as for the opening of private schools, some voluntary bodies have come out, the Roman Catholics, for example, and even parents wishing to put up private schools in the Taita District, for example, and the Government has come forward and said, "No, this should not be done because..." and they have given reasons like lack of teachers and some other things. Now if the Government is lacking teachers, and the Government is not doing anything to step up the provision of teachers, whose mistake, whose fault is it? It is not the fault of the parents. The parents produce the children. It is up to the Government to educate these children. It is not the duty of the Government to tell the parents

they are not making vigorous plans to produce the teachers we will always feel that it is the responsibility of the Minister and the Director of Education, and this should be looked into.

Now I do not know whether this matter could not be so serious as probably to make it necessary for us to doubt the confidence that we might have in the Minister and also in the Director of Education. If no serious steps are taken in this we may interpret the situation as a complete lack of African education, particularly the elementary education, which is the primary at this stage. Now the Director of Education has said that if you get intermediate education you may ask for secondary education, and who knows where it will stop. It is natural that we should develop. That is not a reason for us to be kept behind at the level of primary education, just because if we get intermediate education we may ask for secondary education. But the main thing is this. Education is necessary to get the type of citizen that will understand what is going on in Kenya and what is going on elsewhere. We need a minimum type of education which will give us the citizens that will be helpful to this country. We believe that the intermediate type of education will give us the type of citizen that will understand and will be of some assistance as far as understanding things in the country far as understanding things in the country is concerned. And we also believe that the level of intermediate education will give a chance to our boys and girls to be in a position to help themselves and understand the minor technical courses that they might be faced with in industry, and also be able to do the different minor business occupations in their own locations. Even with a piece of work like tailoring, if a chap chooses to take up tailoring after Standard VIII I believe he can understand the trade better than a child who is so young at Standard IV and finding himself going out of the class.

Now the other aspect, Sir, which has already been touched on, is the question of children repeating. Now I hope the Minister and the Director of Education will send out some directives to some queer education officers who say there is no room, no admission for children to repeat, even when the places, the vacancies, are there. Now I think this is very serious. In some places when the

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[Mr. Ngala]

vacancies are there the education officer says if the child is over 12 years he should not repeat, although the place is there. Now why should the child not repeat if the place is there? Why should the age limit be so serious to the education officer? After all, the parents are prepared that the child should go on and take more education even in the same class, and also it is not the fault of the child that he has not got standard V. It is the fault of the Education Department that they have not provided a place.

Now the other mistake, Sir, I would like to know exactly from the Director of Education why, when the Department fails to give standard V education, and the child repeats, why is he having so many months deducted in the following year's examination marks? I understand as much as 20 per cent of his total marks is deducted. Now I would like to know why that percentage is deducted, and how it was reached—the 20 per cent of the total marks of a child who is repeating.

With these few words, Sir, I would like to oppose the amendment.

MR. LUSENO: Mr. Deputy Speaker, I do realize the seriousness of this question before the House, but I also do realize that the Government has not been standing still, or that they have not overlooked the problem. From what the Director of Education has said, I have learned that there have been increases in the number of primary schools and therefore increases in the number of children to those schools, and this had created a problem for increasing the number of intermediate schools. Now from what I have heard from the Members on the other side of the House there are two questions. One has been that we allow children to repeat Standard IV; I do not know whether this will solve the problem. Whether we allow children to repeat Standard IV or not it would not solve the problem. I would not allow my child to mark time because there is another one to repeat Standard IV in his place, and I think many parents would argue that way. If the children are ready to be promoted to Standard IV, they should go to Standard IV and not mark time because there are others to repeat in their places.

Then there is the second question, that we abolish the Common Entrance Examination. That also, Sir, will not solve the problem. You abolish the competitive entrance examination, and you allow all the children from Standard IV to go on to Standard V, but you do not have sufficient places in Standard V for them. You will not have solved the problem.

So, I think, Sir, that the question before us, or the problem before the country, has been created by lack of funds in both the local and Central Government, to enable us to establish more intermediate schools to take all children from Standard IV to Standard V.

Now, Mr. Deputy Speaker, if I could refer to the Minister for Housing. I remember that there had been few houses in Nairobi; people had been sleeping. I think, outside, but the Minister tried to find funds to put up houses for the people, and I can now see very many beautiful houses in Nairobi, such as the beautiful Jerusalem village.

I turn to the Minister for Works. I see that we have had a four-year plan for putting tarmac on our Kenya roads. Now I see no reason, Sir, why the Minister for Education should not try hard to find funds to help put up more intermediate schools for the country. I would therefore suggest that a committee of enquiry be set up to investigate the possibility of finding funds for the establishment of more intermediate, and if possible, more secondary schools. The Director of Education, if I am not mistaken, said that any suggestions put forward to him would be considered, and I am putting forward this suggestion, otherwise I do not see any other alternative for solving this problem.

I beg to support the amendment.

THE DEPUTY SPEAKER (Mr. Bechgaard): I will be calling on the Mover to reply at five minutes past five.

MR. KHAMISI: Mr. Deputy Speaker, Sir, I have a very few small points to mention. I was very much disappointed, Sir, by the suggestion which was made by the Director of Education to the effect that Mombasa will have the removal of the Common Entrance Examination in 1964. I feel this is very

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[Mr. Khamisi] had indeed because we, in Mombasa, of all the people in Kenya, have been asking the Government to allow us to tax ourselves in order that we may put up buildings for our children to obtain an eight-year education. On top of that we have heard that we are going to be taxed this year, and despite the difficult position—financial position—in which we find ourselves in the town we have agreed to that and to our great surprise we hear today that we will only be able to have this eight-year education in 1964. I think that is a great shame on the part of the Government and the Education Department. We cannot see the reason why we have to wait for four years when we have started paying this year. Last year, Sir, when I raised this matter during the Budget debate I was replied that it should not be necessary to wait until the money had been collected for four years before the buildings were going to be put up. Today, it appears that exactly what I foresaw at that time is what is going to happen.

MR. MILLER: On a point of explanation, Sir, the buildings are being put up. When I said it would be four years before the Common Entrance Examination could be abolished, I meant it would be four years before the whole operation could be completed.

MR. KHAMISI: I am glad to hear that, but I hope the buildings that are going to be put up will, in the first place, eliminate the Common Entrance Examination right from this year so that we have Standard V classrooms put up this year so that there is no more Common Entrance Examination at the end of 1960.

With those few remarks, Sir, I hope the Government will take this matter seriously because the people in Mombasa will think it is strange and will be disappointed and completely perturbed to hear that their generous gesture to co-operate with Government has had no effect to move the Government.

With those few remarks, Sir, I oppose the amendment.

MR. MBOYA: I promise, Mr. Deputy Speaker, to be only two minutes. The point I want to make Mr. Deputy Speaker, is that last year we had a similar Motion put before this House, and we

had a similar amendment proposed by Government. Now the only point I want to make is that we hope that this does not mean another similar Motion in 1961. We, hope, Sir, that it means that Government will get out and do the job of examining or reviewing the situation and meeting the problems that were put before them. We are a bit tired, if not completely tired, of vague phraseology from the Government about what they hope to do in the future and so on. We wish to emphasize to the Government the very special problems that face not only ourselves, as the representatives of the African community, but especially the young children who are thrown out of school at this very tender age. The Government should consider itself morally responsible for the consequences of and especially for the consequences of their being made to leave school at such an age and become potential spivs and criminals in our urban areas.

With this, Mr. Deputy Speaker, which is the only plea I wish to make to the Government, I entirely support the original Motion, and personally I do not see why the Government found it necessary to amend it. We wanted to hear the Government tell us what they have done in the last year and what they hope to do next year, and how soon they hope to achieve the goal that we have set for them.

Lastly, I am very glad to hear that at least for Nairobi there will be full eight years education starting this year.

[Mr. Deputy Speaker (Mr. Bechgaard) left the Chair]

[Mr. Speaker (Sir Ferdinand Cavendish-Bentine) took the Chair]

MR. MATE: Mr. Speaker, Sir, I beg to say one thing to this Government here. Nothing the Minister can say to even the Director can say is going to comfort the African parent. They have given us assurances before but what the Director tells us cannot satisfy the parents of Kenya, whose children cannot get a place. He will give us reasons. He will tell us that it is not necessary for the children that every child gets a place, but he, as a parent, or anybody else, would be like to feel that his child was

[Mr. Mate]—thought of as just every child? Mr. Speaker, Sir, the Director of Education said that we could not educate everybody. Why not? We are educating every European child in Kenya. We are educating every Asian child in Kenya, and yet the Director says not everybody. Does he mean that the Africans are the everybody? I would like to suggest to the Minister that every child matters and it is not correct to say we can wait. And what I should like to impress on the Director of Education and the Minister is that they have not thrown the challenge to the African parents. They have only passed files from office to office. They have not challenged the African parents to put up their own schools, independent schools, run by people who can manage them. We have got plenty of Africans, including many hon. Members here, who would be quite happy to run schools. Not only the Members here, but many other educationalists who could look after schools and thereby increase the number of schools.

The other suggestion is unaided schools. Missions want to start unaided schools, but have been definitely stopped by the Government from doing it, and the Minister here says he does not know what can be done about it, and I feel that this extra self-help is one way out of the problem.

The other suggestion I would like to join hands with is the one from Mr. Luseno from North Nyanza, to set up a committee to go into this emergency. It is an emergency question, and I wish the Director or the Minister would say that they recognize it as such and through their efforts show the country that what he is doing, what the Government is doing is the correct procedure. He knows how it is. When it is a question of money I do not see why Government does not find ways of getting money. For example the resources of the Community Development Department could be drawn into this scheme to improve elementary education. Instead we complain about shortage of money but at the same time there is a lot of waste in government expenditure. I would say this, that whatever is said about this Motion it does not satisfy the African parent.

I oppose the amendment in the strongest possible way and I think the

Government should realize there is an emergency as far as the African people are concerned.

MR. NYAGAH: Mr. Speaker, Sir, I wish to raise three points with the Government. It is not the first time that the African Elected Members or the African parents have raised the question of Standard IV with the Government.

In the present debate, detailed arguments have been raised from this side and the Government knows them only too well. I would like the Minister to assure us that they do in fact have a plan for the African education. We have heard in the course of this debate and outside, that the Beecher Report came to an end at the end of last year. It is serious if there is no plan at all for the African education—long-term policy, not just a plan which comes in with one Director and then when we have a new one he comes up with another. The Beecher Report was a big landmark in the African education. It brought realization and understanding of the need for more and better education to the African parents. It brought home to the Government the need for organized education. It was, however, full of bottlenecks—two or three of them—and one of them was at Standard IV and it is that bottleneck at Standard IV that the African feels that something ought to be done.

The Director spoke of trying to remove it as soon as practicable. The suggestion has been made how to finish this impracticability. One of them is that the Government must declare that there is an emergency. They should begin emergency teacher training colleges. Perhaps they could give a short course of one or two years teacher training as they did in Britain after the last World War. Then we shall be able to get more primary schools elevated to intermediate schools. Of course, there is the question of money which is always raised, but self-help is there. But self-help alone cannot work without the Government trying to do something—perhaps outside its own local resources—to see that this demand by the African children is met. This is not a demand from the African Elected Members, but a demand from the African children who are going to be the future Kenya men and women.

[Mr. Nyagah] Finally, Sir, I would like to remind the Minister of a request I made during the Motion in this Council on the question of unemployment. I suggested that the Minister for Education and Labour should consider setting up a Youth Employment Bureau which will be able to help in advising these young men and women who are unfortunately unable to continue their education because of their limitation of facilities.

With these few remarks, Mr. Speaker, I beg to support the Motion.

THE MINISTER FOR EDUCATION LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, in the few moments that remain before you would wish to call upon the Mover of the original Motion to reply, I would like to speak briefly in support of the amendment and Sir, reply to a number of points which have been raised since my hon. friend the Director of Education addressed himself to the main subject matter of the Motion before the Council.

The hon. Member for Nairobi Area asked why the Government appeared to move an amendment which had been moved to a similar Motion last year and seemed to suggest that we would always be putting off the achievement of this objective on one pretext or another. I think that if he had listened—as I am sure he did—with attention to the remarks of my hon. friend the Director, he must have realized that in the year that has passed since we debated this subject, very substantial progress has been made towards what is the declared objective of the Government and an objective shared, I know, by all hon. Members opposite of providing a full elementary course for every African child.

I find it, however, a little illogical that hon. Members opposite should oppose the amendment since one would assume then that they would wish us to abolish the Common Entrance Examination—which is the main subject of this Motion which is the main subject of this Motion—before it is practicable to do so. That, quite frankly, Mr. Speaker, does not appear to me to be a sensible proposition. I would like to remind hon. Members of an important conference which was convened in November, 1956 on this very subject by my predecessor, now the hon. Chief Secretary, at which representatives

of African Education from all Provinces were assembled to advise him on the steps which should be taken in moving towards a complete elementary course for all. That very representative conference recommended: "That so long as the number of places in intermediate schools is less than the number of primary school leavers, selection by examination must continue. Examination papers should be carefully prepared to make the subsequent selection as accurate as possible and the practice of taking headmasters' recommendations into account when making selections is approved, but selections should not be based solely on the recommendations of headmasters or other teachers."

Now, that advice, which has been followed consistently since that date by the Ministry, is, I think, in some conflict with the suggestion made by the hon. Member for Kitui that we should simply abolish the Examination and make selection for the limited number of places depend entirely on competitive recommendations by headmasters. Now, that I think, by itself would be an undesirable practice.

My hon. friend, the Member for Embu and Meru asked if he could have some assurance that there was some plan—

MR. NYAGAH: On a point of correction, Sir, I am not the Member for Embu and Meru, but the Member for Embu and Nyeri.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, I regret very much having repeated an error which had previously been made from this side of the Council, and would assure the hon. Member for Embu and Nyeri that that error has in no way detracted from the attention which I paid to his remarks.

He asked me whether there was any plan in existence for the further development of African education after the end of the programme which was conducted under the general umbrella of the Beecher Plan, but which rapidly outstripped and modified that plan. I can assure him that we have this time attempted to build from the bottom up by very careful individual consultation with district education boards as to what the development programme should be over the three years 1960-63. We have

[The Minister for Education, Labour and Lands]

had the assistance of the district education boards on this question and we have put these plans together at regional level, and have collated them also centrally. The main emphasis in these plans was, in fact, to bring a better balance between primary and intermediate levels of education with a view to providing a full elementary education for all children. These plans, particularly in relation to the Nyanza Province, show that our objective could not be achieved as easily or as quickly as we wished, and we have, therefore, as my hon. friend the Director said, instituted a special investigation into the problem of the Nyanza District. I hope later to receive the report of that team of investigators and, when I have studied it and we have modified our plans in accordance with it, we expect to have the benefit of the advice of the Educational Adviser to the Secretary of State, Sir Christopher Cox, who is shortly visiting Kenya for a prolonged visit. In the light of his advice, on it, we hope then to be able to present to the Advisory Council on African Education a co-ordinated detailed plan for their comments and for their guidance.

As I know, Sir, that you would wish to see the debate come to a fairly ready conclusion, I will only deal with one further point which struck me as being of importance. Hon. Members suggested that we should greatly intensify our teacher training in order to meet the problems which arise from the shortage of teachers. We have, in fact, provided teacher training facilities likely to cope with the required output, but it has been a disappointment that the entries this year have not measured up to the opportunities offering for the training of teachers. We find it very difficult to induce one in five of those leaving secondary schools, either with or without a school certificate, to enter the teaching profession. We cannot conduct intermediate schools without teachers of T2 or higher qualifications, and we have so far failed to recruit as trainees the numbers we need. We must address ourselves to this problem of encouraging more to enter the profession.

One final point, Sir, as regards the date by which we can abolish the Common Entrance Examination in Mombasa, my

hon. friend the Director has said that 1964 is when we expect the entire problem to be completely solved. But it will be my intention to look into the question again and see how soon and how far we can take the first and convincing step towards doing this in Mombasa.

I beg to support the amendment, Sir.

MR. ARAP MOI: Mr. Speaker, Sir, I rise to thank very sincerely those Members who supported the original Motion. I was puzzled, because I was not convinced by the arguments advanced by the Government side. In fact, no interest whatsoever was taken on that side. Only three hon. Members spoke on it which shows that they had very little interest in it.

Mr. Speaker, Sir, why I say that the Government has no plans is that they did not even take the point that I raised in the first place that there should be a Commission of Enquiry into the educational system in this country. Therefore the Government showed a lack of plan, foresight and also initiative in this matter.

The Minister for Education said that there are plans laid by the district education boards. Yes, I entirely agree that the district education boards have submitted plans to the Ministry of Education, but why cannot the Ministry itself initiate and make plans for the whole system of education?

The hon. Director of Education said that Members on this side did not provide any alternative to the suggestion which had made for the selection of children to go to intermediate schools, the number of which is one-third. Mr. Speaker, as I indicated before, I do not want some children to remain, or to be thrown out instead of being allowed to complete eight years of education at least.

The Government has also stated that they have no funds to carry out this plan. Then I make one suggestion, and that is that the Government should abolish the Kenya Regiment and use funds for educational purposes.

It is also very interesting, Mr. Speaker, that the former Minister for Education, now the leader of the House, did not speak or make any contribution to this Motion. He should have given a lead and made some constructive suggestions

[Mr. arap Moi] to the future of the African education as well as the—

THE CHIEF SECRETARY (Mr. Courts): I had no opportunity—

MR. ARAP MOI: Education of the entire country.

The hon. Nominated Member, Mr. Luseno made, I think a very constructive and sensible speech, and I think he should try to influence this very obstinate Government.

Mr. Speaker, I have no more to add, except to say that the Government should embark on a better system of education. Everybody in this country is fed up with the Government; fed up with its plans and with its blindness and lack of foresight, but only seeing the things which are not of interest to our people. Therefore, I would tell the Government that the time has come to overhaul the whole system of Government, and to overhaul everything—including all policies so as to plan for a better future.

Question that the words proposed to be inserted, be inserted put and carried. Motion, as amended, agreed to.

MINISTERIAL STATEMENT— THE LONDON CONFERENCE

THE CHIEF SECRETARY (Mr. Courts): Mr. Speaker, Sir, I thank you for giving me the opportunity of saying a few words to the House.

We will be completing business this evening and, as Members will be leaving for London, we will not meet again until about the middle of March, as I assume that, after their return, most Members will want to visit their constituencies.

VALEDICTORY

MR. C. M. JOHNSTON AND SIR ERNEST VASEY

On their return there will be one very notable omission on the Government Front Bench. I would like to take up a little of the time of the House to pay a tribute to the Minister for African Affairs, Mr. Johnston. I deem it a privilege to be able to do so because he

is one of my oldest friends in the Administration.

In this House, over the last two or three years, African Affairs, as such, have come under very heavy fire and have been very heavily attacked for a number of reasons, but I have always felt that the attack was never personal to the Minister himself who has always dealt with these attacks in his own inimitable way, if I may say so, always with firmness, always with great patience, always with great tact, and, in addition, a very great addition too, enormous sense of humour. I think we will miss him particularly in this House, but a great number of people are also going to miss him all over the country because he has, during 26 years of service in this Colony, done a great deal for a great number of people, especially the African people with whom he has been so closely connected during the whole of his service. But also, despite what has been said in this House, he will probably be best remembered for the enormous amount of work which he himself did for the rehabilitation of detainees while he was Special Commissioner. The numbers which we have quoted, the numbers of people released and sent back to a normal life, I feel myself, would not have been so great had it not been for the energy, the foresight and the personality of Mr. Johnston. On behalf of this House I would like to wish him and his family the very best of luck for the future in whatever other job he is going to take up and in whatever sphere he enters.

One other person will be absent, and that is Sir Ernest Vasey. I have already paid a valedictory address to him in the House but I would like to say once again that I hope he finds himself happy in the new job which he is now going to take up in Tanganyika.

Now, Sir, taking off my spectacles and assuming the role of the headmaster again, and having this opportunity while I am on my feet, I thought I might perhaps look at the opposite side of the House and say that as the captains and the kings depart next week we, on this side of the House, would like to remind you that you have an enormous responsibility that you will discharge responsibly with the type of responsibility you always show in this

[The Chief Secretary] House, and I am reminded of a tune which was current when I was young, "I'm forever blowing bubbles". I assume that there will be no bubble blowing in London, and I would, in all sincerity, because there are a large number of people on this side of the House who have got the interests of Kenya at heart, like to say on behalf of us all that we wish you the very best of luck in your deliberations; we hope that you will bring us back something that is really worth while for this country.

MR. BLUNDELL: Mr. Speaker, I should like, on behalf of a number of Members on this side of the House, to endorse the words which the hon. Leader of the House has said in regard to the departure of Mr. Johnston. We shall view that departure with the greatest regret.

I first came to know the hon. Member really well when he became the Provincial Commissioner of the Rift Valley Province; and I would like to tell the House first of all how much he was owed in that Province for the way in which he handled the increasing burden of the Emergency situation. I would also like to indicate to the House the insidious way in which co-operation between our officials and unofficials was arranged by himself. He took me on a tour of the Rift Valley Province and it was then that I met and spoke to all the African district councils. It was the first time I had really seen that side of development in the African land units and I remember the people of the Tugen district beseeching me to do my utmost as the leader of the Europeans, as I then was, to help them over the problem of the Lembus Forest. The seeds the hon. Member sowed then, and I am sure he did it perfectly deliberately, bore fruit when I was Minister for Agriculture when I, in conjunction with himself, was able to make arrangements with the Tugen for at least a considerable acreage of the Lembus Forest to be made available to them.

I would like to end, in so far as he is concerned, Mr. Speaker, by saying that we would have liked him to have remained in our country. It may well be that in some capacity or other he will still feel impelled to do so, and, in fact, if that should happen, no one will

be more pleased, I am sure, than hon. Members on this side of the House.

The hon. Leader of the House has also, Sir, referred to the absence of Sir Ernest Vasey and as that has already been dealt with in the Council when I was sick I will merely say, Sir, that we wish him God speed to Tanganyika.

Lastly, Sir, I would like to assure those hon. Members who are remaining behind when we are in London that we shall think of them with affection. I am sure that all of us will give an undertaking to remember and look after their interests; and I am certain that my last remarks will be echoed by those Members on my left. We intend to look upon each other in London as fellow citizens without differing status or grades in one country, Kenya.

MR. HASSAN: Sir, I rise to associate myself with the Chief Secretary and also the leader of the Specially Elected Members. Personally, Sir, I have known Mr. Johnston ever since he started his career as a district officer, and to start as a district officer in the service of the Kenya Government and to reach the position of Minister for African Affairs is not a very easy job. That clearly indicates the most efficient way in which he carried out his duties in every capacity that he was entrusted with. During the Emergency I know very well the way in which he dealt with the lawlessness in the Province that he was in charge of; it was most admirable. Together with other hon. Members I have seen the way in which he carried out his duties as Minister for African Affairs in this House. The position as Minister for African Affairs is unpopular and it is a most thankless job. He carried out his duties to the satisfaction of everybody and in a smiling way, and he dealt with the most damning criticism in such a pleasant way in this House that it was a very great credit to him, and, personally, I feel those who have spent the best part of their lives in Kenya never usually succeed in keeping away; they usually come back to us. We wish him luck in coming back to us and helping and assisting the Government of this country, in any capacity useful whatever befalls it, for the development of Kenya.

He made the second point about Mr Vasey. He was one of the most popular

[Mr. Hassan] Ministers on the opposite Benches, among us on the left particularly. He was one of the gentlemen who never failed to give us very very sane and intelligent advice to deal with the most difficult problems and we shall miss him, miss him very badly. I am pleased that he is going to be a Minister not very far away from us and we hope that, off and on, he will not hesitate to come and give us some experiences of his new career.

Regarding the Chief Secretary's good wishes to us at the round table conference that we are all setting out on, so long as the people of Kenya wish us good luck I can assure them that we shall be able to deliver the goods for the peace and prosperity of this country, and I hope we shall look upon them to assist us in every possible way that we want during that most difficult work which we are undertaking.

With these words, Sir, I thank the Chief Secretary.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, I am extremely grateful for the tributes that have been made to me today by the Members on both sides of the House. I feel almost emboldened to ask the Chief Secretary if he would consider enhancing my pension as a result of what has been said today.

However, Sir, any success which I have had is due to the fact that I have an extremely competent, loyal and hard working staff in my Ministry and in the Provincial Administration: the tributes that have been paid to me today should really in fairness have been paid to them.

Sir, I do not want to keep the House any longer, but I have been told that if I do come back to Kenya I must give 20 days' notice and I will publish it in the Official Gazette.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): That brings us to the end of business on the Order Paper.

Before adjourning Council I would like to be permitted personally, although I am not normally supposed to speak, to wish our colleagues—and I have been privileged to know Mr. Johnston for a very long time—the best of luck in the future.

I therefore now adjourn Council *in die*.

The House rose at thirty minutes past Five o'clock.

WRITTEN ANSWER TO QUESTION

No. 65

MR. ALEXANDER (Nairobi West) to ask the Chief Secretary:—

Has the Television Commission reported to the Government, and if so when is the report likely to be published?

Reply:

Yes, Sir.

The report has not yet been considered by the Government, but it is now with the printer, and it will be published as soon as it has been printed.

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11th Council—Fourth Session

VOLUME LXXXIII

10th November, 1959, to 7th January, 1960

Explanation of Abbreviations

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